



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

### Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

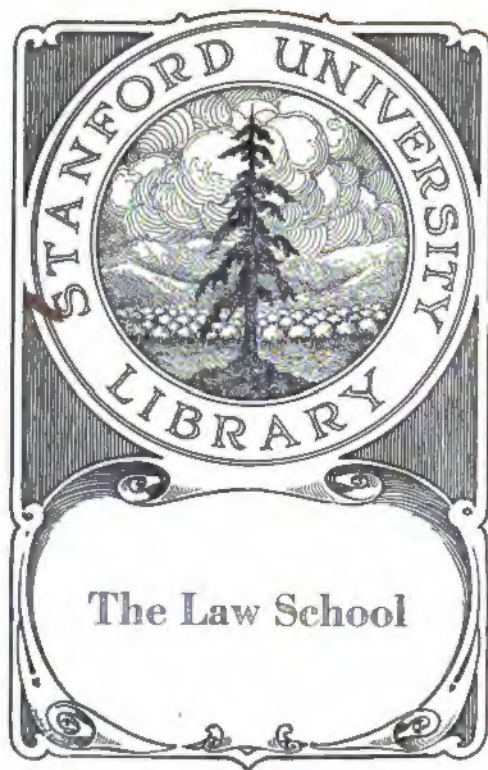
### About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>



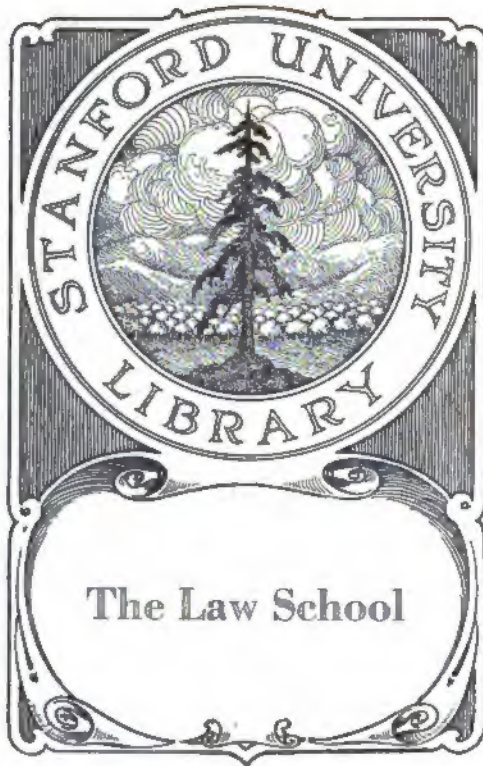


McDivitt, Campbell & Co.  
LAW BOOK  
PUBLISHERS,  
No. 79 NASSAU ST., N. Y.



CX  
ENTB  
YAR  
①

W. H. C. CAMPBELL & CO.  
LAW BOOK  
PUBLISHERS,  
10 NASSAU ST., N. Y.



CX  
ENT  
YAV  
①





**NATIONAL**  
**Bankruptcy Register Digest,**

**CONTAINING**

**ALL THE CASES REPORTED IN THE FIRST TEN VOLUMES OF THE NATIONAL BANKRUPTCY REGISTER REPORTS, FROM THE PASSAGE OF THE LAW IN 1867, TO JANUARY 1st, 1875.**

**ALSO,**

**A TABLE OF CASES REPORTED AND CASES CITED THEREIN, TOGETHER WITH A DIGEST OF THE BANKRUPT LAW, AS AMENDED, AND THE AMENDED GENERAL ORDERS IN BANKRUPTCY.**

**EDITORS:**

**RAPHAEL J. MOSES, JR.**

**WILLIAM A. SHINN.**

• • • • •  
• • • • •

**NEW YORK:**  
**McDIVITT, CAMPBELL & CO.,**  
**79 NASSAU STREET.**  
**1875.**

L 9745

SEP 27 1934

Entered according to Act of Congress, in the year 1875, by  
THE NATIONAL REGISTER COMPANY,  
in the Office of the Librarian of Congress, at Washington.

MADE IN U.S.A.

---

LANE, LITTLE & Co.,  
PRINTERS, ELECTROTYPERS AND STEREOTYPERS,  
108 TO 114 WOOSTER ST., N. Y.

---

## PREFACE.

---

THE object of this work is to combine, in one volume, the Bankrupt Law, and the General Orders in Bankruptcy as amended, together with the decisions in all cases in bankruptcy since the passage of the Bankrupt Act in 1867, to the 1st of January, 1875, reported in the first ten volumes of the National Bankruptcy Register Reports. As explanatory of some peculiarities in this work it is necessary to refer to the history of the Reports. Originally, they were published as a part of the Internal Revenue Record, and afterwards as specific reports of bankruptcy decisions ; but it was not until Volume V. was commenced that the reports were issued in regular law form. To remedy this defect, the first four volumes were reprinted ; and, therefore, the profession have two editions, one in quarto, the other in octavo, differently paged, and the octavo edition containing many additional cases. The ten volumes digested in this work are those of the octavo edition.

Many citations in the first six volumes referred only to the page and volume without giving the case. To neutralize this error we commence the work with a numerically arranged table of cases reported in the ten volumes, so that the case referred to by number and volume may be at once determined.

The Table of "Cases Cited," commencing on page 22, was limited to those which had been reported in the ten volumes, as we believed that the profession would only refer to this table in a *Bankruptcy Digest*, to trace the history of some case decided *in bankruptcy*. While this limitation embraced all such cases, decided under the Bankrupt Act of 1867, it excluded a great mass of cases, decided on collateral matters, cited by the judges as sustaining a particular principle necessary to the adjudication of *that* case, but not relating to the subject of bankruptcy.

The table "Bankrupt Act of 1867" contains all the cases reported in the volumes digested, in which the sections of the Act of 1867 are



directly cited or construed. As the decisions of the judges referred to the sections of the Act of 1867, it was thought safest to insert this table, as a correction of any error in distributing the decisions among the sections of the Revised Statutes of the United States.

On page 135, *et seq.*, will be found a table of "Additional Cases." We have placed under each section of the Bankrupt Law the cases construing that section. This Table contains the remaining cases alphabetically arranged according to subjects.

On page 682 we give a table of "Corresponding Numbers" of the first four volumes, which we have given in justice to those who have these volumes in *quarto*, and because all the citations in the old editions of Volumes V. to IX. of cases in Volumes I. to IV. quote the *quarto* page. Following this is a table of all reported cases in the ten volumes alphabetically arranged, with references to the different pages of the Digest where the points decided in each case are to be found, or where the case is criticised.

In the index of the Digest the subjects and divisions of subjects are alphabetically arranged.

The *decisions* upon a given subject will be found in its place in the alphabetical arrangement; the *law* upon it under the title "Bankrupt Law;" if treated of in General Orders, under "General Orders."

Where the *history* of a case is sought, if cited only by page and volume, the name of the case may be ascertained by referring to the numerically arranged table of cases at the beginning of the volume. If the page number refers to the old *quarto* volumes, the corresponding octavo number may be found in the table at page 682 of "Corresponding Numbers." The title of the case ascertained, the alphabetically arranged Table of Cases (page 686), will at once refer to every subject and page of the Digest where the points decided can be found, or where the case is criticised.

In the interpolation of the amendment of 1874 upon the Revised Statutes of the United States we have, by permission of Mr. Bump, adopted his arrangement, for the purpose of preserving uniformity.

The work has been carefully revised, and, we trust, may be found accurate.

RAPHAEL I. MOSES, JR.,  
WILLIAM A. SHINN.

NEW YORK, *June* 15, 1875.

# TABLE OF REPORTED CASES.

NUMERICALLY ARRANGED.

WHENEVER a case is referred to simply by number and volume, the reader will find the name of the case in this table, and then by reference to the Table of Reported Cases, alphabetically arranged at the end of the Digest, immediately preceding the Index, he will find a reference to each page and section of the Digest, where the points decided in that case may be found.

VOLUME I.		PAGE
Horatio Reed.....	1-2	Henry Jacoby.....118-119
Julius A. Boylan.....	2-5	Davis & Son.....120-121
Adolph Baum.....	5-7	Anonymous cases.....122-125
Jesse H. Robinson.....	8-11	Charles G. Patterson.....125-136
James Macintire.....	11-15	Samuel W. Levy and Mark Levy..136-147
William D. Hill.....	16-21	Charles G. Patterson.....147-149
Julius Heys.....	21-22	“ “ “ .....150-151
William H. Knoepfel....	23-24	Charles H. McIntire.....151-152
Cost and fees.....	25-28	Charles G. Patterson.....152-154
James W. Seymour.....	29-35	David Ruth.....154-161
Patrick C. Devlin & John Hagan...	35-38	Charles G. Patterson.....161-163
Henry F. Metzler & Thos. G. Cow-		James J. Purvis.....163-165
perthwaite.....	39-46	Hugh Campbell.....166-170
John Pulver.....	47-57	Alfred L. Wells, Jr.....171-174
Freeman Orne.....	57-62	S. & M. Burns.....174-176
Mortimer C. Cogswell.....	62-63	Mary A. O'Brien.....176-177
John Bellamy.....	64-70	Julius Shick.....178-180
Wm. H. Knoepfel....	70-73	Donaldson.....181-183
James M. Loweree....	74-74	Publication of notices.....183-184
Abraham E. Hasbrouck.....	75-77	Samuel W. Levy and Mark Levy..184-186
Augustus A. Bliss.....	78-79	Moses Selig.....186-188
Freeman Orne.....	80-85	Isaac Clark.....188-190
Eliza Altenhain.....	85-86	Francis Schnepf.....190-193
The Commonwealth at the instance		Geo. W. Kimball.....193-198
of James Millingar v. Michael		Henry Bernstein.....199-201
O'Hara.....	87-95	Benj. F. Metcalf & Sam'l Duncan..201-203
John Bellamy.....	96-100	James T. Ray.....203-211
Charles G. Patterson.....	101-105	Chas. A. Morford.....211-213
Samuel W. Levy and Mark Levy..	105-107	James M. Palmer.....213-214
“ “ “ “ “ “ “ ..	107-111	Moses C. Smith.....214-214
Isidor Lyon.....	111-112	Anonymous.....215-217
John Bellamy.....	113-117	Wm. E. Townsend.....217-218
		Geo. E. White & John E. May....218-218

## TABLE OF REPORTED CASES.

	PAGE		PAGE
Anonymous .....	219-220	John Morgenthal.....	402-403
John S. Perry.....	221-223	William H. Corner v. E. G. Miller	
Jacob H. Mott and Jordan Mott.....	223-225	et al.....	403-410
Wm. H. Hughes.....	226-231	William D. Miller.....	410-413
John T. Drummond.....	231-237	Van Buren Cobb.....	414-419
Graves... ..	237-239	Jonathan J. Milner.....	419-425
P. and H. Lewis.....	239-241	John Sedgwick v. William Menck	
Glaser.....	241-242	et al.....	425-426
Camp.....	242-243	Jersey City Window Glass Co ...	426-431
Ogden Smith.....	243-248	William D. Hill.....	431-434
John W. Dean.....	249-263	Oliver W. Dodge.....	435-436
Isidor and Blumenthal.....	264-264	Charles H. McIntire.....	436-437
Mawson.....	265-268	George S. Mawson.....	437-439
Fredenburg.....	268-271	Luther Sheppard.....	439-457
Geo. S. Mawson.....	271-274	Alfred Beardsley.....	457-460
Wm. D. Hill.....	275-276	Joseph Haughton.....	460-462
Jules Clairmont.....	276-277	Darius Tallman.....	462-464
Taylor R. Stewart.....	278-280	Owen Byrne.....	464-470
Walter C. Cowles.....	280-285	Addison Moore.....	470-481
Jesse H. Robinson.....	285-294	R. H. Barrow et al.....	481-484
Robert C. Rathbone.....	294-297	James W. Havens....	485-485
Francis T. Prankard and William		Alex. T. Stewart v. Seigfried Isidor	
C. Prankard.....	297-299	et al.....	485-489
Josiah Carpenter.....	299-303	Edward S. Stokes....	489-490
Wm. O'Kell.....	303-304	Frederick Jewett.....	491-494
Alfred Beardsley.....	304-306	" "	495-496
Amendment to Rule 16.....	306-307	B. W. & J. H. Woolums.....	496-498
Charles G. Patterson.....	307-309	Edward T. Sturgeon.....	498-499
Nathan A. Son.....	310-312	Elijah E. Winn.....	499-503
Sampson D. Bridgman.....	312-315	Nathaniel O. Cram.....	504-516
Edward P. Tanner.....	316-318	Frederick C. Crowley and William	
Wm. A. Walker .....	318-319	J. Holmisen.....	516-520
Isaac Rosenfield, Jr. ....	319-323	William Leeds.....	521-522
John Thompson.....	323-324	William H. Magie.....	522-524
Robert C. Rathbone.....	324-326	Phelps, Caldwell & Co.....	525-530
Samuel W. Levy and Mark Levy..	327-328	Sutherland.....	531-536
Daniel P. Kingsley.....	329-335	Robert C. Rathbone.....	536-540
Andrew J. Walker.....	335-336	Darius Tallman.....	540-542
Louis Glaser.....	336-341	Bradshaw v. Henry Klein et al....	542-545
Wm. H. Little.....	341-344	Merchants' National Bank of Has-	
Benjamin Sherwood.....	345-352	tings v. Daniel W. Truax.....	545-547
James Black and William Secor...	353-364	James H. Hafer & Bros.....	547-547
Curtis Judson.....	364-369	George S. Mawson.....	548-549
Henry C. Bolton.....	370-371	Jacob A. Koch.....	549-551
William Griffen.....	371-373	John C. Collins.....	551-555
Walter H. Waite and E. J. Crocker.	373-378	Ellis.....	555-557
Asa W. Craft.....	378-385	Frederick B. Walton et al.....	557-558
William S. Walker.....	386-388	Sherburne.....	558-559
J. McClellan.....	389-390	William H. Langley.....	559-569
Benjamin H. Hatcher.....	390-391	G. W. Pennington v. J. H. Low-	
Stephen B. Leachman.....	391-392	enstein et al.....	570-572
J. W. Wright.....	393-394	G. W. Pennington v. Sale & Phelan	
Heman P. Harden.....	395-399	et al... ..	572-575
Robert Ratcliffe.....	400-402	Isaac Rosenfield.....	575-581

## TABLE OF REPORTED CASES.

9

	PAGE		PAGE
Louis Meyers.....	581-585	Simpson.....	47-48
Hafer & Bro.....	586-587	Strauss.....	48-54
Charles E. Beck.....	588-592	Lawson.....	54-56
Thomas Noakes.....	592-595	Salmons.....	56-58
Jones v. Leach et al.....	595-598	Jones.....	59-61
John P. Smith and James Smith.....	599-601	Irving v. Hughes.....	62-68
C. D. Tuttle v. D. W. Truax.....	601-602	Anonymous.....	68-69
David Shields.....	603-604	Andrew P. Van Tuyl.....	70-73
Henry Gettleson.....	604-613	Bashford.....	73-74
Tatnall Baily.....	613-617	New York Mail Steamship Co.....	74-74
Thomas Princeton.....	618-621	Warren C. Abbe.....	75-80
Benjamin F. Appold.....	621-625	Lukins v. Aird.....	81-88
Isaac Seckendorf.....	626-628	Williams.....	83-86
Thomas F. Bowie.....	628-631	Gordon, McMillan & Co. v. Scott & Allen.....	86-88
Edward Bigelow et al.....	632-636	Dean et al.....	89-92
Andrew P. Van Tuyl.....	636-642	Housberger & Zibelin.....	92-95
Louisa Heirschberg.....	642-644	Adams.....	95-104
George H. Arledge.....	644-647	Harris.....	105-105
Rankin and Pullan et al. v. Flori- da, Atlantic and Gulf Central R. R. Company.....	647-660	O'Kell.....	105-105
Alexander Frear.....	660-665	Grant.....	106-107
William K. Belcher.....	666-667	Carson & Hard.....	107-109
Edward Bigelow et al.....	667-672	Clarke.....	110-110
John Sedgwick v. James K. Place et al.....	673-674	Elliott.....	110-111
John Sedgwick v. Wm. Menck and Chas. B. Bostwick.....	675-676	Craft.....	111-113
James L. Fowler ex parte O'Neill.....	677-679	Lawson.....	113-113
Edward Hubbard, Jr.....	679-680	Rundle & Jones.....	113-114
James L. Fowler.....	681-683	Davidson.....	114-116
		Rosenfeld, Jr.....	117-128
		Mealy.....	128-129
		Boutelle.....	129-134
		Wallace.....	134-137
		Wylie.....	137-139
		Bray.....	139-140
		Hill.....	140-141
		Anonymous.....	141-141
		John S. Wright.....	142-151
		Clough.....	151-154
		Lanier.....	154-160
		Arnold.....	160-167
		Farish.....	168-171
		Borst.....	171-171
		Black & Secor.....	171-172
		Mead v. National Bank of Fayette- ville.....	173-180
		March v. Heaton & Hubbard.....	180-181
		Bennett.....	181-183
		Perdue.....	183-188
		Thornton.....	189-191
		Hall... ..	192-194
		Grow v. Ballard et al.....	194-197
		McBrien.....	197-199
		Tyrrel.....	200-201
		Doody.....	201-202

## VOLUME II.

	PAGE
Scofield v. Moorhead.....	1-2
Hirsch.....	3-7
Brock v. Hoppock.....	7-9
Reed.....	9-10
Blake.....	10-11
Hummitsh.....	12-13
Pomeroy.....	14-15
O'Bannon.....	15-17
Dunham & Orr.....	17-21
Cone & Morgan.....	21-22
Purcell & Robinson.....	22-26
Devoe.....	27-30
Hazleton.....	31-36
Haley.....	36-41
Wright & Peckham.....	41-42
Belden.....	42-43
Puffer.....	43-44
Pettis.....	44-45
Powell.....	45-47



	PAGE		PAGE
H. A. & J. B. Richardson.....	202-204	Machad.....	352-353
Kimball.....	204-208	Fernberg et al.....	353-353
Crockett et al.....	208-211	Kimball.....	354-355
Hansen.....	211-212	Metzger.....	355-356
Stokes.....	212-212	Howland.....	357-358
Dreyer.....	212-213	Gay.....	358-371
Wilmott.....	214-214	Bigelow & Kellogg.....	371-378
Brant.....	215-219	Hawkins et al.....	378-381
McNair.....	219-220	Locke.....	382-387
Sidle.....	221-226	Needham.....	387-388
Brisco.....	226-226	Kerr.....	388-391
James.....	227-227	Davis et al.....	392-396
Haynes.....	227-228	Lawson.....	396-397
Sallee.....	228-228	Rogers & Coryell.....	397-398
Bidwell.....	229-229	Glaser.....	398-399
Williams.....	229-232	Haughrey v. Albins.....	399-406
Foster.....	232-235	Foster v. Hackley & Sons.....	406-419
Rosenberg.....	236-241	Bowdenheim & Adler.....	419-422
Bill v. Beckwith et al.....	242-250	Meyer.....	422-423
Ballard & Parsons.....	250-252	The New York Mail Steamship Co.....	423-424
Bridgeman.....	252-253	Feinberg, Steinbock & Pessels.....	425-426
Griffin.....	254-257	Lambert.....	426-427
McVey.....	257-260	Vogel.....	428-435
Rathbone.....	261-272	Bogart & Evans.....	435-437
Adams.....	273-277	Hussman.....	438-446
Fallon.....	277-278	Watts.....	447-448
Brodhead.....	278-280	Louis & Rosenham.....	449-452
Talbot.....	280-285	Waite & Crocker.....	452-455
Solomon.....	285-287	Foster et al. v. Ames et al.....	455-465
Wyatt.....	288-294	Brooks.....	466-468
Little.....	294-297	Wilson v. Brinkman et al.....	468-472
Smith.....	297-298	Armstrong v. Rickey Bros.....	473-476
Wm. W. Tracy, Jas. Willson, Thos.		Pearson.....	477-478
J. Strong v. Joseph U. Orvis.....	298-298	Bailey v. Nichols et al.....	478-480
- Greenfield.....	298-302	Lang.....	480-481
Newman.....	302-305	Migel.....	481-484
Lowenstein.....	306-307	O'Farrell.....	484-485
Doe.....	308-309	Van Nostrand v. Barr et al.....	486-488
Lane.....	309-310	Schwab.....	488-490
Greenfield.....	311-313	Wright.....	490-498
Pulver.....	313-315	Hambright.....	499-506
Wadsworth v. Tyler.....	316-323	McIntosh.....	506-507
Goodridge.....	324-329	Jackson & Pearce.....	508-512
Grefe.....	329-330	Billing.....	512-515
Bonesteel.....	330-332	Loder Bros.....	515-516
Hyman.....	333-336	Robinson & Chamberlin.....	516-517
Slichter.....	336-337	Loder, Bros.....	517-519
Hawkins v. First National Bank of		The Soldiers' Business Messenger	
Hastings.....	338-340	and Dispatch Company.....	519-521
Robinson.....	341-343	Morgan, Root & Co. v. Mastick.....	521-525
McNair.....	343-344	Gainey.....	525-526
Brandt.....	345-348	Stillwell.....	526-528
Edwards.....	349-349	The Kerosene Oil Company.....	529-530
Winkens.....	349-352	Fitch et al. v. McGie ex parte Sanger.....	531-533

## TABLE OF REPORTED CASES.

11

	PAGE		PAGE
Barrett.....	533-537	Thomas.....	38-39
Anderson.....	538-539	Mittledorfer & Co. ex parte Ruther-	
Hunt.....	540-546	glen.....	39-41
Henkel.....	546-547	Wallace v. Conrad.....	41-45
Martin.....	548-549	Lathrop, Ludington & Co.....	46-46
Schuyler.....	549-552	Kyler.....	46-47
People's Mail Steamship Co.....	553-554	Forsaith v. Merritt.....	48-50
New York Mail Steamship Co.....	554-555	McKay & Aldus.....	51-55
Bigelow et al.....	556-560	Hoyt.....	55-57
Comstock v. Wheeler.....	561-562	Littlefield.....	57-61
Colman.....	563-566	Ruddick v. Billings.....	61-66
McLean.....	567-570	Feely.....	66-69
Watson.....	570-573	Robinson & Chamberlain.....	70-72
Barnes v. Moore.....	573-575	Dibble et al.....	72-73
Marks.....	575-577	Rosenberg... ..	74-75
Ruehle.....	577-579	The Columbian Metal Works.....	75-76
Van Tuyl... ..	579-582	Davenport.....	77-79
Beatty.....	582-584	Pegues.....	80-82
Bogert & Evans.....	585-586	Tulley.....	82-84
Shafer & Hamilton.....	586-587	Summers.....	84-86
Beal.....	587-590	Phelps v. A. B. & C. L. Clasen.....	87-96
White.....	590-590	Noble.....	97-98
Schieffer & Garrett.....	591-594	Merrifield.....	98-100
Emison.....	595-596	Craig... ..	100-103
Langley v. Perry.....	596-599	Preston.....	103-104
Whitehead.....	599-602	McFaden.....	104-105
Farrin v. Crawford et al.....	602-607	Eidom.....	106-108
Doan v. Compton & Doan.....	608-614	Stewart.....	108-110
Webb & Johnson.....	614-617	Bryan.....	110-118
Dibblee et al.....	617-629	Ahl et al., assignees, v. Thorner....	118-124
Martin v. Berry.....	629-642	New York Kerosene Oil Co.....	125-127
Brock v. Terrell.....	643-648	McDermott Pat. Bolt Manufacturing	
Washington Marine Insurance Co.....	648-649	Company.....	128-130
Kyler.....	650-651	Rosenburg.....	130-133
Hollensshade.....	651-655	Ulrich et al.....	133-137
Bolander v. Gentry.....	656-662	Montgomery.....	137-139
Fortune.....	662-665	Sedgwick, assignee, v. Place et al..	140-144
Ex parte Morrow, In re Young....	665-667	Avery v. Johann.....	144-146
Jorey & Sons.....	668-671	Murdock.....	146-149
Coleman.....	672-674	Batchelder.....	150-152
		Gilbert.....	152-153
		Myrick.....	154-156
		".....	156-157
		Taylor.....	158-160
		Eidom.....	160-161
		Driggs, assignee, v. Russell et al..	161-164
		Goldschmidt.....	165-170
		Schepeler et al....	171-172
		Shepard.....	172-177
		Neale.....	177-182
		Jordan.....	182-184
		Thompson and McClallen....	185-187
		Heimsheimer et al. v. Shea &	
		Boyle.....	187-191

## VOLUME III.

	PAGE		PAGE
Moses & Charles Mittledorfer.....	1-6		
Bond.....	7-8		
Kelly v. Strange.....	8-11		
Canaday.....	11-13		
Keach.....	13-15		
Clark.....	16-17		
Randall & Sutherland.....	18-27		
Weikert & Parker.....	27-28		
Alexander.....	29-33		
Davis & Green v. Armstrong.....	34-38		

	PAGE		PAGE
High and Hubbard.....	192-196	McBrien.....	345-347
Burgess.....	196-197	Mebane.....	347-351
Vogel.....	198-199	Hinds et al.....	351-356
Bellis and Milligan .....	199-207	Graham, assignee, v. Stark et al....	357-371
Sigsby v. Willis.....	208-214	Wells....	371-374
Buse.....	215-215	Montgomery.....	374-377
Sohoo.....	216-217	Smith.....	378-385
Kintzing.....	217-218	Hardy et al. v. Clark & Bininger...	385-393
Lee, assignee, v. Franklin Avenue German Savings Institution et al.	218-221	Scammon, assignee, v. Cole & Hooper....	393-410
White, assignee, v. Raftery.....	221-224	Lathrop et al.....	410-417
Miller v. Keys.....	225-227	Goodwin.....	417-418
Shumate and Blythe, assignees, v. Hawthorne.....	227-229	Davidson.....	418-422
Nickodemus.....	230-236	Hartough et al.....	422-423
Foster and Pratt... ..	237-241	Montgomery.....	424-426
Holt, Jr.....	241-243	“ .....	426-429
Lord.....	243-244	“ .....	429-430
A. B.....	244-245	“ .....	430-435
O'Donohue.....	245-250	Thornhill & Williams et al. v. The Bank of Louisiana.....	435-439
Brown.....	250-256	Young & Young.....	440-441
Eldred.....	256-258	Mitchell et al.....	441-443
Pierce and Holbrook.....	258-261	Connell, Jr.....	443-444
Evans.....	261-263	Broome....	444-444
Orem & Company v. Harley.....	263-265	Woolford.....	444-445
Walker v. Barton, assignee.....	265-266	Kington.....	446-452
Noonan & Connolly.....	267-268	Goodfellow ..	452-455
Gebhardt.....	268-268	Day v. Bardwell et al.....	455-465
Lowenstein and Lowenstein.....	269-270	Freiderick.....	465-467
Bellis and Milligan....	271-273	Gillespie v. McKnight et al.....	468-473
Hammond v. Coolidge.....	273-276	Joslyn et al.....	473-481
Wilbur.....	276-278	Bininger et al.....	481-487
Valk and Valk.....	278-280	Clark & Bininger—Beecher, as- signee.....	487-489
The New York Mail Steamship Co.	280-281	Beecher v. Bininger et al .....	489-491
Creditors v. Cozzens & Hall.....	281-282	Clark & Bininger. ....	491-496
Palmer.....	283-285	Bellis & Milligan.....	496-497
The American Water-proof Cloth Company.....	285-285	Campbell, assignee, v. The Traders' Nat. Bank et al.....	498-508
Wilkinson .....	286-286	Cozart.....	508-510
Williams and Williams.....	286-290	Meeking et al. v. Creditors .....	511-512
Manly.....	291-296	Spicer & Peckham v. Ward & Trow.	513-517
Burk....	296-301	Bonesteel... ..	517-518
Palmer.....	301-302	Clark v. Bininger.....	518-524
Sedgwick, assignee, v. Place et al.	302-303	Clark & Bininger.....	525-529
Earle.....	304-304	Gregg.....	529-540
Dey... ..	305-309	Catlin, assignee, v. Foster.....	540-551
Hollis Kenny et al.....	310-312	Scofield et al.....	551-556
Fortune.....	312-314	Dresser.....	557-558
Sutherland.....	314-317	Goodwin v. Sharkey.....	558-561
Kingsbury et al.....	318-324	Adams.....	561-564
Brand.....	324-329	Rogers ..	564-566
Muller and Brentano.....	329-339	Ouimette.....	567-575
Davis.....	339-343	Askew .....	575-580
Broome.....	344-344		

## TABLE OF REPORTED CASES.

13

PAGE		VOLUME IV.	
			PAGE
Erwin & Hardee.....	580-582	Sampson, assignee, v. Burton et al..	2-17
Penn et al.....	582-583	Dumont.....	17-20
Brown.....	584-586	Bowman v. Harding.....	20-23
Collins & Farrington, assignees, v.		Wynne.....	23-32
Bell et al. ....	587-588	Laurie et al.....	32-34
The "World" Company v. Brooks.....	588-590	Phelps v. Sterns et al.....	34-34
The Camden Rolling Mill Co.....	590-594	Norris.....	35-38
Jervis v. Smith.....	594-601	McKinsey & Brown, assignees, v.	
Strachan.....	601-602	Harding....	39-46
Driggs, assignee, v. Moore et al....	602-618	Linn et al. v. Smith.....	47-51
Herrman & Herrman.....	618-621	Tonkin & Trewartha.....	52-59
Lewis.....	621-627	United States v. Clark.....	59-62
The New York Mail Steamship		Lacy.....	62-63
Company.....	627-629	C. H. Whitehouse, petitioner for	
Snedaker.....	629-638	Habeas Corpus.....	63-64
Briggs.....	638-640	Freeman.....	64-66
Doyle.....	640-647	Mackay et al.....	66-67
Bates v. Tappan.....	647-649	Mackay.....	67-68
Herrman & Herrmann.....	649-651	Solis.....	68-72
Bogert & Oakley.....	651-654	Potter et al. v. Coggeshall.....	73-84
Loder.....	655-656	Kinzie v. Winston.....	85-92
Clifton et al. v. Foster et al., as-		Gunike.....	92-93
signee.....	656-660	Richards.....	94-95
G. P. & B. W. Fay.....	660-661	Rupp.....	95-97
York & Hoover.....	661-670	Melick.....	97-100
The Estate of Elder.....	670-684	Janeway.....	100-102
Bushey.....	685-685	Harthorn.....	103-104
Bromley & Co.....	686-696	Tyler.....	104-106
Vickery.....	696-698	Marshall.....	106-107
Crawford .....	698-709	Minon v. Van Nostrand et al.....	108-112
Chamberlain & Chamberlain.....	710-716	United States v. Prescott et al.....	113-115
Ballou.....	717-718	Fuller.....	116-121
Woodward & Woodward.....	719-719	Babbitt, assignee, v. Walbrun & Co.....	121-126
Webb & Taylor.....	720-720	Terry & Cleaver.....	126-131
Brown.....	720-722	Hoyt et al. v. Freel et al.....	132-144
Ungewitter v. Von Sachs, as-		The "Lady Bryan Mining Co"....	144-145
signee.....	723-726	M. Olds et al.....	146-147
Stetson.....	726-730	Bloss.....	147-153
Gunther et al. v. Greenfield		Mallory.....	153-160
et al.....	730-731	Whittaker.....	160-163
Griffiths.....	732-735	Ghirardelli.....	164-167
Frost & Westfall.....	736-741	Snedaker.....	168-178
Downing.....	741-742	W. B. & J. F. Alexander.....	178-182
Scott.....	742-748	Odell v. Wootten.....	183-185
Downing.....	748-754	Bank of India, Australia, and China	
Dibblee et al.....	754-757	v. Evans et al.....	186-190
Peck... ..	758-761	Loder .....	190-194
Solis.....	761-764	Belden & Hooker.....	194-196
Murray.....	765-768	Bean, assignee, v. Brookmire &	
Dean.....	769-772	Rankin.....	196-203
Perkins v. Gay.....	772-776	Beckerkord.....	204-207
Jenkins, assignee, v. Mayer.....	777-781	Street v. Dawson, assignee.....	207-210
Doyle.....	782-787	Maxwell et al. v. Faxton et al.....	210-211
Hutto.....	787-788		



	PAGE		PAGE
Darby .....	211-212	Johann .....	434-436
Herndon v. Howard.....	212-213	Zinn et al.....	436-439
Chandler.....	213-219	Vogle, assignee, v. Lathrop.....	439-446
Payne & Bro. v. Able et al.....	220-221	Mays v. The Manufacturers' Na-	
Richter's estate.....	222-233	tional Bank of Philadelphia....	446-450
Feeny .....	233-237	Fogerty & Gerrity....	451-456
Clark et al .....	237-240	Gregg.....	456-459
Olmsted.....	240-242	Beers et al., assignees, v. Place &	
Moore & Bro. v. Harley.....	242-242	Co. et al.....	459-466
Rockwell & Woodruff.....	243-248	J. J. & C. M. Walton.....	467-471
Allen, assignee, etc., v. Massey et al.	248-253	Leighton v. Kelsey et al .....	471-476
Wilson, assignee, v. Stoddard.....	254-257	Tenny & Gregory v. Collins.....	477-478
Littlefield v. Delaware and Hudson		May v. Harper & Atherton.....	478-479
Canal Company.....	258-262	York & Hoover.....	479-487
Hardy, Blake & Co. v. Bininger &		Martin, assignee, v. Toof, Philips &	
Co.....	262-271	Co.....	488-496
Seay.....	271-274	Sedgwick, assignee, etc., v. Casey..	496-498
Martin, assignee, etc., v. Smith et al.	275-291	Eldrige.....	498-502
Bigler v. Waller.....	292-295	Corey et al. v. Ripley.....	503-509
Munger & Champlin.....	295-302	Bound.....	510-510
Butler.....	303-307	Markson & Spaulding, assignee, v.	
Valliquette.....	307-308	Heaney.....	511-522
Darby.....	309-314	Silverman.....	523-534
Adams v. Boston, Hartford and Erie		United States v. Geary.....	534-536
R. R. Co.....	314-323	Allen, administratrix, etc., v. "The	
Beattie, assignee, v. Gardner et al..	323-341	Soldiers' Dispatch Co.".....	537-538
Starkweather, assignee, v. Cleve-		Orcutt.....	538-539
land Ins. Co.....	341-347	Chappel.....	540-541
Jones.....	347-348	Place & Sparkman .....	541-543
Rison, assignee, v. Knapp.....	349-364	Carow .....	544-548
Weeks.....	364-367	Shaffer v. Fritchery & Thomas....	548-553
Stevens.....	367-370	Masterson.....	553-558
Zinn et al.....	370-373	Haskell.....	558-562
Fox v. Eckstein.....	373-375	Leonard .....	563-569
Stubbs.....	376-377	Cassard et al. v. Kroner.....	569-571
Kahley et al.....	378-384	Howard Cole & Co.....	571-579
Hitchings.....	384-389	Creditors v. Williams .....	580-585
Keefer.....	389-390	McLean et al. v. Brown, Weber &	
Wielarski.....	390-391	Co.....	585-587
Benjamin, assignee, etc., v. Graham.	391-392	Antrim, assignee, v. Kelly et al...	587-588
Harthill.....	392-393	Schwartz.....	588-593
"Lady Bryan Mining Co.".....	394-397	Kipp.....	593-597
Smith, assignee, etc., v. Buchanan		Burkholder et al. v. Stump.....	597-599
et al.....	397-400	Vetterlein .....	599-600
Cornwall.....	400-405	Darby's Trustees v. Boatman's Sav-	
Price.....	406-408	ings Institution.....	601-610
Benjamin, assignee, v. Hart.....	408-410	Wright v. Filley.....	611-613
Hanna.....	411-411	Watson .....	613-616
Innes v. Carpenter.....	412-412	The Second National Bank of Leav-	
Dewey.....	412-414	enworth et al. v. Hunt, assignee...	616-618
Scott & McCarty.....	414-427	Angier ...	619-619
Stranahan, assignee, v. Gregory &		Bakewell.....	619-623
Co.....	427-431	Hubbard et al. v. The Allaire	
Maurer, assignee, v. Frantz.....	431-434	Works....	623-626

## TABLE OF REPORTED CASES.

15

	PAGE		PAGE
Wright, assignee, v. Johnson.....	627-629	Krogman.....	116-118
The Troy Woolen Company.....	629-631	Frizzelle.....	119-121
Collins, assignee, v. Gray et al.....	631-635	“.....	122-122
Cookingham, assignee, v. Ferguson.....	636-645	Karr v. Whitaker.....	123-125
The Iron Mountain Co. of Lake		Farrell.....	125-128
Champlain.....	645-647	Borden & Geary.....	128-130
Klancke.....	648-649	Masterson v. Howard et al.....	130-132
Jones, assignee, v. Kinney et al....	650-651	Keating v. Keefer.....	133-143
Andrews v. Graves.....	652-657	Ellerhorst & Co.....	144-147
Giddings, assignee, v. Dodd, Brown		Swope et al. v. Arnold.....	148-152
& Co.....	657-660	Brombey, assignee v. Smith et al..	152-155
Mays et al., assignees, v. Manufac-		Graham.....	155-157
turers' National Bank of Phila..	660-666	Merritt v. Glidden et al.....	157-159
Cronan v. Cotting.....	667-671	Kohlsaat v. Hoguet et al.....	159-160
Commonwealth v. Walker et al....	672-677	Hunt, Tillinghast & Co. v. Pooke &	
Way v. Howe.....	677-682	Steere.....	161-167
Hunt et al. v. Taylor et al.....	683-684	Sedgwick, assignee v. Place et al..	168-181
Burper et al. v. Sparhawk... ..	685-689	Hall, assignee &c., v. Wager &	
Drake v. Rollo, assignee, etc.....	689-690	Fales.....	182-191
Hitchcock v. Rollo, assignee, etc...	691-706	Comstock & Young.....	191-194
Williams v. Merritt.....	706-710	Frank.....	194-199
Reed, Bros. & Co. v. Taylor et al...	710-713	Boyd.....	199-204
O'Connor v. Parker et al.....	713-714	Haskell, assignee &c., v. Ingalls...	205-211
Wilson v. Capuro et al.....	714-715	Beers et al.....	211-213
Davis.....	716-723	Skelly.....	214-218
Zantzinger v. Ribble, assignee.....	724-728	Harvey, assignee, v. Crane.....	218-222
Gallinger.....	729-732	Warren and Chas. Leland.....	222-230
		Alden v. Boston, Hartford & Erie	
		R. R. Co.....	230-231
		Boston, Hartford & Erie R. R. Co..	232-232
		“ “ “ “ “ ..	233-233
		Sweatt v. Boston, Hartford & Erie	
		R. R. Co....	234-252
		Peiper v. Harmer.....	252-253
		McGrath & Hunt.....	254-255
		Clark & Bininger.....	255-256
		Scammon, assignee, v. Cole et al..	257-270
		Wilson, assignee, v. City Bank of	
		St. Paul.....	270-279
		Lawrence, assignee, v. Graves....	279-285
		Hester.....	285-288
		Penn et al.....	288-290
		Carson.....	290-292
		Hanna.....	292-293
		Preston.....	293-298
		Stevens.....	298-301
		Crawford.....	301-303
		Bucyrus Machine Company.....	303-304
		Knight v. Cheney.....	305-317
		Lord.....	318-333
		Beam v. Laffin.....	333-338
		Sawyer et al. v. Turpin et al.....	339-346
		Sedgwick v. Millward.....	347-348
		Welch.....	348-350

## VOLUME V.

	PAGE
Morgan et al. v. Thornhill et al....	1-11
Post v. Corbin.....	12-15
Cookingham et al. v. Morgan et al...	16-19
Baldwin v. Rapplee.....	19-20
Smith & Bickford.....	20-23
Trim, ex parte Marshall, Purcell et	
al. v. Wagner et al.....	23-30
Penn et al.....	30-34
Sherman et al. v. Bingham et al....	34-39
Blandin.....	39-43
Lathrop et al.....	43-46
Heller.....	46-53
Sanger & Scott.....	54-55
Golson et al. v. Neihoff et al.....	56-63
Coulter.....	64-71
Barstow v. Peckham et al.....	72-78
Forsyth v. Woods.....	78-81
Bunster.....	82-93
Schenck.....	93-94
Leighton.....	95-96
Alabama & Chattanooga Railroad	
Co. v. Jones.....	98-111
Stevens.....	112-116

	PAGE		PAGE
Warshing.....	350-351	Paddock.....	132-138
Lenke v. Booth.....	351-352	Pratt, Jr. v. Curtis et al.....	139-145
Gallison et al.....	353-357	Davis v. Anderson et al.....	146-162
Hood et al. v. Karper et al.....	358-366	Rooney.....	163-165
Overton.....	366-366	Judson v. Kelty et al.....	165-168
Thornhill et al., and Williams v. Bank of Louisiana.....	367-380	Independent Insurance Company..	169-173
Rainsford.....	381-393	Pease et al.....	173-174
Vogel.....	393-399	White v. Jones.....	175-178
Taylor v. Rasch & Bernhart.....	399-407	Bush.....	179-181
Massachusetts Brick Company.....	408-413	Moses.....	181-183
Warner et al.....	414-421	Stansell.....	183-188
Wood.....	421-422	Kahley et al.....	189-194
Cretiew.....	423-433	Clark & Bininger.....	194-201
Hunt & Hornell.....	433-437	" " ".....	202-204
Darby's Trustees v. Lucas.....	437-439	" " ".....	204-207
Kreuger et al.....	439-443	The Central Bank.....	207-208
Cox v. Wilder et al.....	443-451	Boston, Hartford & Erie R. R. Co..	210-222
Case v. Phelps et al.....	452-459	" " " " " " ".....	222-234
Samson v. Burton et al.....	459-466	Ryan & Griffin.....	235-237
State of North Carolina v. Trustees of University et al.....	466-471	Kenyon & Fenton.....	238-246
Blodget & Sanford.....	472-478	Rogers v. Winsor.....	246-251
Warren & Rowe v. Tenth National Bank et al.....	479-484	Lady Bryan Mining Company.....	252-255
Maltbie v. Hotchkiss.....	485-490	F. & A. Speyer.....	255-256
M. and M. National Bank v. Brady's Bend Iron Company.....	491-492	Butterfield.....	257-260
Hunt.....	493-494	Independent Insurance Co.....	260-272
		The Stuyvesant Bank.....	272-276
		Pratt.....	276-277
		Noyes.....	277-283
		United States v. Pusey.....	284-295
		Goedde & Co.....	295-297
		Norton.....	297-299
		Carter.....	299-302
		Webb & Co.....	302-303
		Dundore v. Coates & Bros.....	304-304
		Cornwall.....	305-330
		Blake v. Alabama & Chattanooga R. R. Co.....	331-338
		Hercules Mutual Life Assurance Society.....	338-350
		Marcer.....	351-352
		Traders' Nat. Bank v. Campbell...	353-358
		Babbitt v. Walbrun & Co.....	359-365
		North v. House et al.....	365-372
		Howard, Cole & Co.....	372-376
		Symonds v. Barnes.....	377-379
		Cohn.....	379-386
		Jones.....	386-388
		Mansfield.....	388-395
		Paddock.....	396-397
		Sacchi.....	398-400
		Price.....	400-400
		Samson v. Blake et al.....	401-403
		Samson v. Burton et al.....	403-410
		Samson v. Blake et al.....	410-415

## VOLUME VI.

	PAGE
Smith v. Mason.....	1-10
Dow.....	10-16
Troy Woolen Company.....	16-22
Mallory.....	22-32
Curran et al. v. Munger et al.....	33-39
Pusey.....	40-42
Merchants' Insurance Company....	43-49
Toof et al. v. Martin.....	49-56
Elfelt et al. v. Snow et al.....	57-71
City Bank of Savings, Loan and Discount.....	71-77
Blaisdell et al.....	78-84
Humble & Co. v. Carson.....	84-85
Baldwin et al. v. Wilder et al.....	85-89
Dupee.....	89-92
Isaacs & Cohn.....	92-101
Sands Ale Brewing Company.....	101-106
Alabama & Chattanooga R. R. Co.	107-116
Jobbins v. Montague et al.....	117-126
Bingham v. Richmond & Gibbs....	127-129
Bingham v. Frost, Same v. Wil- liams.....	130-132

# TABLE OF REPORTED CASES.

17

	PAGE
Stuart v. Hines et al.....	416-425
O'Neale.....	425-428
Stowe, ex parte Godfrey.....	429-432
Eckfort & Petring v. Greely.....	433-440
Goddard v. Weaver.....	440-442
Belden.....	443-448
Ship Edith.....	449-464
Platt v. Archer.....	465-496
Sacchi.....	497-501
Butler.....	501-509
Jobbins v. Montague et al.....	509-518
Vetterlien et al.....	518-521
Kempner.....	521-532
Stephens.....	533-541
Brinkman .....	541-542
Lake.....	542-544
Preston.....	545-552
Hyslop v. Hoppock et al.....	552-556
Hyslop v. Hoppock.....	557-558
Paine v. Caldwell.....	558-569
Ferguson et ux. v. Peckham et al..	569-572
Van Riper .....	573-578
Nounnan & Co.....	579-585
Shower .....	586-592

## VOLUME VII.

	PAGE
Edmondson v. Hyde.....	1-15
Nounnan & Co.....	15-26
Ten Eyck & Choate .....	26-30
Cohn .....	31-37
Henricksburgh & Block.....	37-45
Pusey.....	45-47
Warner et al.....	47-48
Ellerhorst et al.....	49-55
Morse .....	56-60
Haake.....	61-72
Dunkle & Driesbach.....	72-96
Smith v. Kehr et al.....	97-106
Dunkle & Dreisbach.....	107-125
Woods.....	126-132
Ess & Clarendon.....	133-137
Vinton.....	138-140
Jaycox & Green.....	140-142
Atkinson.....	143-144
Alabama & Chattanooga R. R. Co. v. Jones.....	145-174
Forsyth & Murtha.....	174-181
Lyon.....	182-185
Sedgwick v. Wormser.....	186-188
United States v. Thomas.....	188-190
Meyer v. Aurora Ins. Co.....	191-192
Hayden .....	192-192

	PAGE
Goodall v. Tuttle.....	193-217
Emery et al. v. Canal Nat. Bank...	217-226
Stillwell.....	226-229
Ex parte Ames, McKay & Aldus...	230-238
Horter et al. v. Harlan .....	238-240
Cox v. Wilder et al.....	241-245
Charles M. Garrison, assignee, v. John J. Markley, In Equity.....	246-250
Pioneer Paper Co.....	250-254
Buckner v. W. B. Street, assignee of Walter Sessions, bankrupt...	255-268
William H. Holleman v. Charles Dewey, assignee of the Bank of North Carolina .....	269-278
David J. King & Wm. King.....	279-282
Raymond S. Perrin & I. A. Hance..	283-284
Charles S. Wescott et al.....	285-286
Garrison .....	287-288
Winter v. The Iowa, Minnetona & North Pacific Railway Co.....	289-294
John McGilton et al.....	294-299
Van Camp Bush, appellant, v. Josiah Crawford, assignee.....	299-303
Jaycox and Green.....	303-319
Mendenhall v. Carter.....	320-329
Reakirt.....	329-332
H. Petrie et al.....	332-334
Lincoln & Cherry .....	334-337
Kennedy & Mackintosh.....	337-339
Withrow v. Fowler.....	339-340
Charles K. Herrick.....	341-342
William Manheim.....	342-343
Ira Hay et al.....	344-346
Gardner, Deputy Sheriff, v. Cooke, assignee.....	346-351
Sanford .....	352-352
Bachman v. Packard .....	353-358
Francis & Buchanan.....	359-375
Lake Superior Ship Canal, Rail- road & Iron Co.....	376-392
Safe Deposit & Savings Institution.	393-399
Beall v. Harrell et al.....	400-400
Massey et al. v. Allen .....	401-404
Woods et al. v. Buckewell et al..	405-407
John Sime & Co.....	407-412
Bingham v. Claflin et al.....	412-421
Brinkman.....	421-438
Kinhead .....	439-444
Stuyvesant Bank.....	445-448
Heath & Hughes.....	448-448
Longstreth v. Pennock et al.....	499-450
Warren v. Delaware, Lackawanna & Western Railway Co.....	451-458
Merrick.....	459-467

	PAGE		PAGE
Munn.....	468-476	Davis.....	167-175
Newland ...	477-480	Fisher v. Henderson et al.....	175-179
Warren v. Tenth Nat. Bank et al.....	481-489	Jordan.....	180-188
Shearman v. Bingham et al.....	490-503	Haas & Samson.....	189-190
Hanna.....	502-504	Holland.....	190-192
Neilson.....	505-506	Payson v. Dietz.....	193-197
Jones.....	506-508	Republic Insurance Co.....	197-208
Lamb v. Damron.....	509-512	Moseley, Wells & Co.....	208-214
Buchanan et al. v. Smith.....	513-526	Adams v. Meyers.....	214-217
Raynor.....	527-538	Seaver v. Spink.....	216-221
Dole.....	538-551	Upton v. Burnham.....	221-225
Bieler.....	552-557	Hyde v. Sontag & Eldridge.....	225-228
Kingsley.....	558-559	Bean v. Amsink.....	228-237
Hartel.....	559-560	Frazier & Fry v. McDonald.....	237-238
Babbitt v. Burgess.....	561-568	Zeiber & Hill.....	239-240
Bean v. Brookmire & Rankin.....	568-578	Jaycox & Green.....	241-279
Jaycox & Green.....	578-591	Clemens.....	279-285
Swift.....	591-595	King.....	285-287
Brockway.....	595-598	Daggett et al.....	287-288
Hope Mining Co.....	598-600	Sedgwick v. Lynch.....	289-301
Hosie.....	601-603	Indianapolis, Cincinnati & Lafay-	
Hershman.....	604-608	ette R. R. Co.....	302-309

## VOLUME VIII.

	PAGE		PAGE
Gunn v. Barry.....	1-5	Steadman.....	319-332
Owen & Murrin.....	6-11	Heydette.....	333-336
Bartholomew v. West et al.....	12-15	Scammon v. Kimball.....	337-345
Ulrich et al.....	15-24	Sheehan.....	345-353
Hyde v. Bancroft & Steiner.....	24-30	".....	353-356
Granger & Sabin.....	30-38	J. & M. Pfromm.....	357-361
Town et al.....	38-39	Stobaugh v. Mills & Fitch.....	361-366
".....	40-44	Kean et al.....	367-379
McNaughton.....	44-47	Goodman.....	380-384
Mitchell.....	47-48	Hawkeye Smelting Co.....	385-390
Tiffany v. Lucas.....	49-55	Phelps v. Sellick.....	390-396
Perkins.....	56-70	Wilson.....	396-401
Casey.....	72-78	Smith.....	401-408
Pittock.....	78-90	McKercher & Pettigrew.....	409-411
Riggs, Lectenbergh & Co.....	90-93	Troy Woolen Co.....	412-415
Penn et al.....	93-94	Schumpert.....	415-421
Benham.....	94-96	National Iron Co.....	422-423
Marshall v. Knox et al.....	97-105	Jackson.....	424-425
Derby.....	106-117	Robinson v. Pesant.....	426-428
Morrill.....	117-122	Archenbrowne.....	429-430
Fireman's Insurance Co.....	123-129	Wright.....	430-432
Austin v. O'Rielly.....	129-131	Daggett.....	433-436
Vogler.....	132-142	Knight.....	436-444
Sherry.....	142-144	Brent.....	444-447
Knickerbocker Insurance Company		Purviance v. Union National Bank.....	447-451
v. Comstock.....	145-151	O'Dowd.....	451-453
Voorhees v. Frisbee.....	152-158	Donahue & Page.....	453-457
Gilbert v. Priest.....	159-167	Hutchings et al. v. Muzzy Iron	
		Works.....	458-461

## TABLE OF REPORTED CASES.

19

	PAGE		PAGE
Stewart v. Emerson.....	462-483	Grinnell.....	137-138
Riggin v. Magwire.....	484-486	Comer v. Southern Express Co....	138-140
Whitman v. Butler.....	487-493	King.....	140-141
Hudson v. Bingham.....	494-508	Staplin.....	142-143
Rosey.....	509-514	Jackson v. Miller et al.....	143-144
Price & Miller.....	514-521	Biddle's Appeal.....	144-144
Thornhill & Co. v. Link.....	521-525	Sawyer et al. v. Hoag et al.....	145-152
Finn.....	525-526	Citizens' Savings Bank.....	152-154
Wilson v. Childs, Anshutz v. Camp-		Cook v. Waters et al.....	155-167
bell Wearer.....	527-527	Lockett v. Hoge.....	167-183
Christman v. Haynes.....	528-528	Bank of Madison.....	184-191
Mead v. Thompson.....	529-532	Stokes v. State of Georgia.....	191-192
Johnson v. Bishop.....	533-537	Dole.....	193-205
Medbury v. Swan.....	537-541	Leiter et al. v. Payson.....	205-208
Stuart v. Ansnueller et al.....	541-545	Leland et al.....	209-227
Lewis.....	546-547	W. P. Long & Co.....	227-244
Mitchell v. McKibbin.....	548-556	Tiffany v. Boatman's Savings Insti-	
Lenihan v. Haman et al.....	557-559	tution.....	245-255
Jones & Cullom v. Knox.....	559-561	Stephenson v. Jackson.....	255-258
Coxe v. Hale.....	562-570	Bugbee.....	258-267
Batchelder v. Low.....	571-576	Whyte.....	267-270
		Parks et al.....	270-273
		Trowbridge.....	274-278
		DeForest.....	278-281
		Osage Valley and Southern Kansas	
		Railroad Co.....	281-285
		Mendenhall.....	285-288
		Coit v. Robinson et al.....	289-298
		Sutherland et al. v. Lake.....	
		Superior Ship Canal, Railroad, and	
		Iron Co.....	299-313
		Burfee v. First National Bank of	
		Janesville.....	314-318
		Stuyvesant Bank.....	318-324
		Schapter.....	324-331
		Freeland & Gerson v. Holloman	
		et al.....	331-336
		Gray v. Rollo.....	337-341
		Catlin v. Hoffman.....	342-348
		Ward.....	349-354
		Appleton v. Bowles et al.....	354-356
		Graves et al. v. Winter et al.....	357-359
		Anderson.....	360-365
		Hall.....	366-372
		Rice.....	373-376
		Poleman.....	376-378
		Tesson et al.....	378-380
		Mendenhall.....	380-382
		Sabin.....	383-384
		Prescott.....	385-387
		McConnell.....	387-395
		Wood Mowing and Reaping Ma-	
		chine Co. v. Brooks.....	395-402
		Moore et al. v. Walton et al.....	402-408

## VOLUME IX.

	PAGE
Walbrun et al. v. Babbitt.....	1-6
Hall v. Allen.....	6-7
Dillard.....	8-18
Clark v. Iselin et al.....	19-25
Miller v. O'Brien.....	26-28
G. B. Grinnell & Co.....	29-38
Smith v. Crawford.....	38-47
Pratt.....	47-48
Sweet et al.....	48-48
Harrell v. Beall.....	49-50
Reynolds.....	50-57
Clemens.....	57-62
Newland.....	62-66
Clark.....	67-70
Stoddard v. Locke et al.....	71-73
Alston v. Robinett.....	74-76
Kansas City Stone and Marble Man-	
ufacturing Co.....	76-83
Findlay.....	83-88
Comstock et al.....	88-90
Everitt.....	90-96
Wilson v. City Bank of St. Paul...	97-107
Salkey & Gerson.....	107-110
Smith v. Little.....	111-116
Opinion of Attorney General.....	117-123
Smith et al. v. Manufacturers' Na-	
tional Bank.....	122-132
Weaver.....	132-134
McGready v. Harris.....	135-136



	PAGE		PAGE
Redmond & Martin.....	408-412	The Lake Superior Ship Canal,	
Jelsh & Dunnebacke.....	412-415	Railroad, and Iron Co.....	76-81
Jordon.....	416-419	J. F. & C. R. Parkes .....	82-85
May & Merwin.....	419-423	Southern Minnesota Railroad Co..	86-89
Howes & Macy.....	423-430	Seabury.....	90-96
Dyke & Marr.....	430-432	Buchanan.....	97-103
Cook et al. v. Tullis.....	433-440	King .....	103-104
Keenan v. Shannon et al.....	441-445	Morrison.....	105-106
Britton v. Payen et al.....	445-457	Pierson... ..	107-126
Watson v. Citizens' Savings Bank..	458-466	Jay Cooke & Co.....	126-132
Hyde v. Corrigan.....	466-473	Morss v. Grittmann.....	132-133
Partridge v. Dearborn et al.....	474-477	Hill.....	133-134
Bartusch.....	478-480	Lane & Co., In re Boynton.....	135-140
Allen & Co. v. Ferguson.....	481-484	Fees for Registering.....	141-144
Knickerbocker Insurance Co. v.		Blodgett & Sanford.....	145-149
Comstock.....	484-486	Burch.....	150-151
Dunn et al.....	487-488	Obear v. Thomas.....	151-156
Hotchkiss.....	488-491	Barnett et al. v. Hightower & But-	
Jones.....	491-494	ler.....	157-164
Laner.....	494-497	Rules of Practice.....	164-165
Mendenhall.....	497-502	Scull.....	166-172
Ex parte Talcott, In re Souther....	502-506	Hamlin, assignee, v. Pettibone....	173-178
Litchfield.....	506-508	The Union Pacific Railroad Co....	178-187
Dingee v. Becker.....	508-513	Spaulding, assignee, v. McGovern	
Chandler.....	514-522	et al.....	188-190
Hubbel et al.....	523-525	Rosenthal.....	191-192
Shuey.....	526-527	Pierson .....	193-200
Cameron v. Camio & Co.....	527-528	Penny v. Taylor.....	201-206
First National Bank v. Cooper et al..	529-535	Buckhouse & Gough.....	206-208
United States v. Herron.....	535-546	Pickering.....	208-209
Zahm v. Fry et al.....	546-556	Witkowski .....	209-213
Jones et al.....	556-566	Heffron .....	213-214
Kerr & Roach.....	566-567	Steinman.....	214-215
Bininger & Clark.....	568-573	Clancy.....	215-224
M. A. Parrish.....	573-575	Hovey et al. v. Home Ins. Co.....	224-236
		Chandler, Receiver, et al. v. Siddle..	236-239
		Warren Savings Bank v. Palmer &	
		Co.....	239-240
		Bartholow et al. v. Bean, assignee...	241-243
		Harrison v. McLaren.....	244-250
		Fendley.....	251-253
		Simmons .....	254-260
		Smith, assignee, v. McLean et al..	261-268
		Christley.....	268-270
		Holyoke v. Adams.....	270-274
		Southside Railroad Co.....	274-277
		Reade et al. v. Alerhouse et al.....	277-280
		Harlow .....	280-284
		Allen v. Ward.....	285-287
		Cole v. Roach.....	288-288
		Bank of North Carolina.....	289-290
		Wilson & Shober v. Bank of North	
		Carolina .....	290-294
		O'Neill v. Dougherty.....	294-295

## VOLUME X.

	PAGE
Daniel Deckert .....	1-9
Joseph Solomon.....	9-14
Russell v. Thomas.....	14-21
Clark & Daughtrey.....	21-27
Sedgwick v. Place.....	28-43
Fourth National Bank of Chicago v.	
City National Bank of Grand Rap-	
ids, Michigan.....	44-47
Alonzo Murphy.....	48-48
Kehr et al. v. Smith, assignee.....	49-54
Hyde, assignee, v. Woods et al.....	54-60
Joliet Iron and Steel Co.....	60-66
Scammon.....	67-69
Raffauf.....	69-72
Angell.....	73-76



# TABLE OF REPORTED CASES.

21

	PAGE		PAGE
Hall v. Scovel.....	296-300	Rogers.....	444-448
Shuman v. Strauss.....	300-304	Aspinwall.....	448-451
Morris et al. v. Swartz.....	305-306	Comstock & Co .....	451-456
Maxwell v. McCune et al....	307-309	Griffiths.....	456-459
Treat.....	310-312	McDonnell et al.....	460-461
Dusenbury v. Hoyet.....	313-316	Brooke, assignee, v. McCracken...	461-466
Kane, assignee, v. Jenkinson.....	316-326	Reeser v. Johnson.....	467-469
Cogdell, assignee, v. Exum.....	327-330	Kane, assignee, v. Rice.....	469-477
Noonan.....	330-334	Lacy, Downs & Co.....	478-497
Collins.....	335-336	Meeks v. Whatley.....	498-503
Houghton.....	337-340	Allen & Co. v. Montgomery et al...	504-512
Mills et al. v. Davis et al.....	340-355	Mosselman & Poelaert, trustees, v. Caen.....	513-515
The Ansonia Brass and Copper Co. v. The New Lamp Chimney.....	355-359	Miller v. Bowles, et al., Appleton v. Stevens, assignee.....	515-517
Halliburton v. Carter.....	359-362	Piper v. Baldy.....	517-523
Wheelock v. Lee.....	363-368	Foster v. Estate of Rhodes.....	523-526
Upton, assignee, v. Hasbrough....	370-380	Woolfolk et al. v. Gunn.....	526-528
McFarland & Co.....	381-383	Perkins et al.....	529-535
Hagan.....	383-384	Atkinson v. Kellogg.....	535-538
Beecher, assignee, v. Clark et al....	385-398	Kent & Co. v. Downing, assignee...	538-540
The Sixpenny Savings Bank et al. v. The Estate of the Stuyvesant Bank..	399-411	Woolfolk v. Murray, Bryan v. Sims.	540-545
Myers, assignee, v. Seely et al....	411-414	Wooddail, administratrix, v. Austin & Holliday.....	545-547
The St. Helen's Mill Company....	415-419	Austin v. Markham.....	548-549
Keeler.....	419-421	Lumpkin et al. v. Eason.....	549-553
Meador et al. v. Everett, assignee...	421-423	Smith, assignee, etc., v. Ely.....	553-565
Sutherland v. Davis.....	424-427	King.....	566-567
Jordan.....	427-432	The Receiver of the Ocean National Bank v. The Estate of Wild....	568-579
Hymes.....	434-438	Sleek et al. v. Turner's assignee...	580-582
C. J. Francke, Jr., & C. F. Francke.	438-444		

## TABLE OF CASES CITED.

---

THIS table is intended to contain only cases which are *reported* in the ten volumes digested, and afterwards cited. It has been prepared to enable the reader to trace the history of each case reported, in determining what principles it was deemed by the counsel or the court to sustain or refute. The figures immediately following the name of the case refer to the volume and page where the case is reported; those following the letter c., the volume and page where cited.

Abbe. 2-75.....c. 5-229; 10-331	Ballou. 3-717.....c. 5-77; 6-483
Adams. 2-272.....c. 4-69, 72; 5-120, 396	Bank of Leavenworth v. Hunt. 4-616.....
“ 3-561.....c. 5-389	c. 5-344, 346; 7-10
“ v. Boston, Hartford & Erie R. R.	Barrow. 1-481....c. 2-433; 4-519, 522, 546;
Co. 4-314....c. 5-104, 251; 7-290	7-428, 429; 9-310
Ahl v. Thorner. 3-118.....c. 4-495	Barstow v. Peckham. 5-72.....c. 6-570
Alabama & Chattanooga R. R. Co. v. Jones.	Bartholomew v. West. 8-12.....c. 9-377
5-97....c. 5-244; 7-290	Bates v. Tappan. 3-647.....c. 6-419
“ “ “ R. R. Co. v. Jones.	Beal. 2-587.....c. 5-229
6-107....c. 7-159	Bean v. Brookmire. 4-196....c. 5-221; 6-15,
Alden v. Boston, H. & E. R. 5-230.....	140; 8-230, 235
c. 10-331, 345	Bears v. Place. 4-459.....c. 6-505
Alexander. 3-29.....c. 5-77, 239, 314;	Beatty v. Gardner. 4-323.....c. 5-209, 210,
4-37, 409, 433; 7-196, 430	333, 334; 6-31, 473
“ 4-178.....c. 6-185	Beck. 1-588.....c. 7-79
Allen v. Massey. 4-248....c. 7-576; 10-418	Beckerkord. 4-204.....c. 8-181, 369, 404;
“ v. Soldiers' Business Messenger and	10-428
Despatch Co. 4-537....c. 7-192;	Beecher v. Bininget et al. 3-489....c. 6-
10-286	419; 10-331, 345
Angell. 10-78.....c. 10-452	Beers. 5-211.....c. 9-379
Anon. 2-68.....c. 4-154	Bellamy. 1-64.....c. 2-420
Appold. 1-621.....c. 5-26	“ 1-96.....c. 2-562
Archenbrowne. 8-429.....c. 9-351	Bernstein. 1-199.....c. 6-30; 7-437;
Arledge. 1-644.....c. 10-345	10-345
Arnold. 2-160.....c. 4-495	Bigelow. 1-632....c. 4-149; 5-122; 6-185,
Avery v. Johann. 3-144....c. 6-186; 8-351	187; 7-430; 8-394
	“ 2-371.....c. 9-244, 379
Backman v. Packard. 7-353..c. 4-97; 10-462	Bill v. Beckwith. 2-241....c. 2-464; 4-37,
Bakewell. 4-619.....c. 9-277	519, 522, 557; 5-77; 7-539
Baldwin v. Wilder. 6-85.....c. 6-344	Billing. 2-512.....c. 10-458
Ballard & Parsons. 2-250....c. 6-87, 245, 340	Bingham v. Claffin. 7-412.....c. 9-163

- Bininger. 4-262.....c. 6-274  
 Black & Secor. 1-353.. ....c. 1-602, 380;  
     2-320, 470, 492; 4-781; 5-159.  
     208, 331, 333; 6-289; 10-343  
 Blaisdell. 6-78.....c. 7-157, 160  
 Bloss. 4-147....c. 6-186, 188; 8-277; 9-390;  
     10-83  
 Bogert & Evans. 2-585.....c. 4-545, 710;  
     7-429  
 Bonesteel. 2-330.....c. 6-483; 7-543  
     "    3-517.....c. 5-77, 315; 7-150  
 Boston, Hartford, & Erie R.R. Co. 5-232....  
     c. 6-180  
 Boston, Hartford, & Erie R.R. Co. 6-210....  
     c. 8-112  
 Bontelle. 2-129.....c. 7-161  
 Bowie. 1-628....c. 4-546; 6-31; 7-428, 482;  
     8-328, 394  
 Bowman v. Harding. 4-20.....c. 6-419  
 Bradshaw v. Klien. 1-542....c. 4-25; 7-576  
 Brand. 3-324.....c. 6-188; 8-277; 9-392;  
     10-83  
 Brandt. 2-215 .....c. 4-70; 7-543  
 Bray. 2-139., .....c. 4-562  
 Bridgman. 1-312.....c. 8-394  
     "    2-252.....c. 6-185; 9-144  
 Broadhead. 2-278.....c. 5-389  
 Brock v. Hoppock. 2-7.....c. 5-216; 8-520  
 Brock v. Terrell. 2-643....c. 6-30; 7-428,  
     539; 10-418  
 Bromley & Co. 3-686.....c. 7-544  
 Brombey v. Smith. 5-152.....c. 8-394  
 Broome. 3-343 .....c. 6-140  
 Brown. 3-584....c. 5-354; 8-514; 9-317;  
     10-278  
 Buchanan v. Smith. 7-513....9-106, 118,  
     449, 470, 475; 10-558  
 Burgess. 3-196.....c. 5-415; 10-125  
 Burk. 3-296.....c. 7-161  
 Burkholder v. Stamp. 4-597.....c. 6-388  
 Burns. 1-174.....c. 4-41; 6-419  
 Burper v. Sparhawk. 4-685.....c. 4-684  
 Bushey. 3-685.....c. 6-80; 7-160  
 Butterfield. 6-257.....c. 7-587  
 Byrne. 1-464.....c. 8-437; 9-376  
  
 Camden Rolling Mill Co. 3-590....c. 10-102,  
     497  
 Campbell. 1-165....4-41, 711; 6-32, 419;  
     7-438; 10-345, 346.  
 Campbell v. Traders' Bank. 3-498.....  
     c. 4-495, 531; 7-93  
     "    "    6-353....c. 10-558  
 Carow. 4-544.....c. 6-80; 7-100, 543  
 Carson et al. 2-107.....c. 7-543  
 Case v. Phelps. 5-452 .....c. 6-539  
 Cassard v. Kromer. 4-569 .....c. 4-712  
 Catlin v. Foster. 3-540 .....c. 6-381  
 Central Bank. 6-207 .....c. 8-196  
 Chamberlain. 3-710 .....c. 10-182  
 Chandler. 4-213....c. 5-116; 6-240, 301,  
     344; 8-283; 9-60  
 City Bank of Savings. 6-71.....c. 10-233  
 Clarke. 2-110.....c. 2-147  
 Clark & Bininger. 3-489....c. 6-419; 10-331,  
     345  
     "    "    3-524.....c. 10-345  
     "    "    5-255.....c. 10-83  
 Cogswell. 1-62 .....c. 4-149  
 Cohn. 6-379 .....c. 7-351  
 Coleman. 2-671.....c. 4-542  
 Collins v. Gray. 4-681 .....c. 4-643  
 Columbia Metal Works. 3-75....c. 7-429  
     9-310  
 Commonwealth v. O'Hara. 1-86....c. 1-569;  
     2-453, 487; 5-88  
 Compton. 2-607....c. 6-87, 245, 340, 349;  
     8-291  
 Corner, v. Miller, et al. 1-403.....c. 5-88  
 Cone & Morgan. 2-21.....c. 6-87  
 Cookingham, et al. v. Morgan, et al. 5-16...  
     c. 6-38  
 Corey v. Ripley. 4-503....c. 4-682; 6-378;  
     9-74  
 Cornwall. 4-400.....c. 6-308  
 Cowles. 1-280.....c. 6-87, 239, 340  
 Cox v. Wilder. 5-443.....c. 9-377  
     "    "    et al. 7-241....c. 7-106; 8-13;  
 Cozart. 3-508.....c. 6-505  
 Craft. 1-378.....c. 2-470; 4-731; 5-331;  
     7-92  
     "    "    .....c. 4-444  
     "    2-111.....c. 6-289  
 Crawford. 3-698....c. 5-354; 7-22, 43, 594;  
     8-92; 9-317; 10-278  
 Crockett v. Jewett. 2-208 ....c. 8-437;  
     9-410; 10-331  
  
 Darby. 4-211 .....c. 4-620, 621  
     "    4-309.....c. 4-620; 9-277  
 Darby's Trustee v. Boatman's Saving In-  
     stitution. 4-600....c. 5-66; 8-87, 291;  
     10-185  
 Darby's Trustees v. Lucas. 5-437....  
     c. 8-289  
 Davidson. 3-418... c. 4-57; 5, 208, 436;  
     6-536; 7-98

- Davis. 2-391.....c. 4, 149, 517; 5-122;  
6-419; 7-68; 8-265, 394  
" 3-339.....c. 6-87  
" v. Anderson, 6-145.....c. 7-435;  
9-46, 310; 10-356  
" & Green v. Armstrong. 3-34....c. 6-245,  
300, 349; 9-133  
Day v. Bardwell. 3-455....c. 4-712; 8-181  
Dean. 1-249.....c. 6-280  
" 3-768.....c. 6-387; 10-212  
Deckert, Daniel. 10-1.....c. 10-428  
Devlin v. Hagan. 1-35.....c. 6-28; 7-434  
Devoe. 2-27.....c. 4-64  
Dey. 3-305.....c. 5-70, 71; 10-525  
Dibblee. 2-617.....c. 4-731; 5-87; 6-87,  
7-78; 10-558  
Dillard. 9-8.....c. 9-567  
Doan v. Compton. 2-607.....c. 6-87, 245,  
340, 349; 8-291  
Dodge. 1-435.....c. 6-576  
Dole. 9-193.....c. 10-212  
Dow. 6-10.....c. 6-250; 7-155; 8-291.  
Downing. 3-748....c. 6-98; 7-226; 8-437;  
9-238, 374, 376, 380;  
10-331  
Driggs v. Moore. 3-602 ....c. 4-531; 6-38;  
9-4; 10-558  
Drummond. 1-231...c. 6-38; 7, 78; 10-558.  
Dunham. 2-17.....c. 8-336, 387  
Dupee. 6-89.....c. 7-157  
Earle. 3-304.....c. 7-447  
Edmondson v. Hyde. 7-1.....c. 8-119;  
10-559  
Eidom. 3-160.....c. 5-7  
Elder. 3-670.....c. 7-464  
Eldridge. 4-498.....c. 10-557, 558,  
559  
Ellerhorst. 5-144.....c. 7-319  
Elliott. 2-110.....c. 2-147  
Ellis. 1-555.....c. 5-301  
Emery v. Canal National Bank. 7-217.  
c. 8-444; 9-244  
Ess & Clarendon. 7-133.....c. 9-496  
Evans. 3-261.....c. 4-156; 6-129; 7-142  
Farrin v. Crawford. 2-602....4-458, 495;  
6-482; 10-558  
Fay, et al. 3-660....c. 7-447  
Feinberg. 2-425.....c. 7-447  
Fitch v. McGie. 2-531.....c. 5-209  
Forsyth, et al. 7-174.....c. 10-558  
Forsyth v. Woods. 5-78....c. 9-46, 311, 380  
Foster. 2-282.....c. 5-415  
Foster v. Hackley. 2-406....c. 2-471; 4-363;  
7-539  
" v. Ames et al. 2-455.....c. 7-210,  
429; 8-459; 9-310;  
10-502  
Francke. 10-438.....c. 10-530  
Frear, 1-660 ....c. 2-78, 145; 5-113; 9-376  
Freiderick. 3-465....c. 5-156; 6-189, 577;  
7-138  
Freeman. 4-64.....c. 5-430; 10, 331  
Fredenberg. 1-268.....c. 2-425; 7-159,  
446, 447  
Fuller. 4-116.....c. 6-31, 183  
Gallison, et al. 5-353.....c. 7-592  
Gardner v. Cook. 7-346....c. 8-430; 9-351  
Gay. 2-358 .....c. 2-452; 5-415; 7-597  
Gebhardt. 3-268.....c. 8-386  
Gettleston. 1-604....c. 2-157, 333, 436; 6-82  
Ghirardelli. 4-164.....c. 6-31  
Gilbert. 3-152.....c. 5-396  
" v. Priest. 8-159.....c. 8-196  
Gillies v. Cone, et al. 2-21.....c. 6-87  
Glaser, 1-336....c. 2-29, 145; 4-166, 546;  
7-428, 433  
Goddard v. Weaver. 6-440.....c. 8-328  
Goedde & Co. 6-295.....c. 9-376  
Goldschmidt. 3-165.....c. 4-66  
Golson v. Neihoff. 5-56....c. 8-289; 10-558  
Goodall v. Tuttle. 7-193.....c. 7-354, 430,  
501, 512; 9-47  
Goodfellow. 3-452 .....c. 7-78  
Goodridge. 2-324.....c. 5-389  
Goodwin v. Sharkey. 3-558.....c. 5-389  
Gordon v. Scott, et al. 2-86.....c. 5-7;  
6-304, 424  
Grady, 3-227.....c. 5-229  
Graham v. Stark. 3-357....c. 4-495, 625;  
6-189, 577; 7-233; 8-384; 9-4; 10-558  
Graham. 5-155.....  
Greenfield. 2-311.....c. 2-548; 5-353  
Gregg, 4-456.....c. 4-699; 10-558  
" 3-529 .....c. 6-543  
Griffin. 2-254.....c. 9-377  
Griffiths. 3-731.....c. 4-77; 5-154, 221;  
6-13; 10-364, 560  
Gunn v. Barry. 8-1 .....c. 8-185, 368, 405;  
9-16, 17, 93, 567  
Haake. 7-61.....c. 8-40, 394  
Hafer. 1-547.....c. 9-273; 10-147  
Haley. 2-36 .....c. 7-161, 464  
Hall v. Wager & Fales. 5-182....c. 9-317;  
10-558

- Hambright.** 2-498.....c. 5-301  
**Hamlin v. Pettibone.** 10-173.....c. 10-465, 530  
**Hanna.** 5-292.....c. 6-160  
**Harden.** 1-395.....c. 6-327  
**Hardy et al. v. Bininger & Co.** 3-385.....c. 5-384; 7-93, 454; 10-558  
     "      "      "      4-262.....c. 6-38; 10-558  
**Harris.** 2-105.....c. 2-526  
**Hartough.** 3-422.....c. 5-165; 8-437; 9-410; 10-331  
**Harvey v. Crane.** 5-218.....c. 8-220; 10-558  
**Hasbrouck.** 1-75.....c. 2-585; 4-546; 7-429  
**Haskell v. Ingalls.** 5-205.....c. 7-456, 437  
**Haughton.** 1-460.....c. 4-731  
**Haver & Bro.** 1-586.....c. 2-157  
**Hawkins' Appeal.** 2-378.....c. 6-481  
**Hawkins v. First National Bank.** 2-338.....c. 10-557  
**Heath & Hughes.** 7-448.....c. 7-549  
**Housberger.** 2-92.....c. 2-662; 6-418; 7-348; 9-351  
**Heinsheimer.** 3-187.....c. 4-215; 6-245  
**Heirschberg.** 1-642.....c. 5-192; 7-142  
**Heller.** 5-46.....c. 7-160  
**Hercules Assurance Society.** 6-338.....c. 7-286, 293, 322  
**Hester.** 5-285.....c. 9-377  
**High.** 3-192.....c. 4-559; 6-187  
**Hill.** 1-16.....c. 1-53; 5-50; 6-81; 7-161  
     "      1-431.....c. 5-389  
**Hirsch.** 2-3.....c. 6-568; 7-163  
**Hitchcock v. Rollo.** 4-690.....c. 10-233  
**Hollis.** 3-310.....c. 6-245, 340, 349  
**Howard, Cole & Co.** 4-571.....c. 7-225; 9-379  
**Hoyt.** 3-55.....c. 7-161  
**Hubbard.** 1-679.....c. 10-83  
**Hughes.** 1-226.....c. 6-576; 7-159  
**Hunt, Tillinghast & Co. v. Pooke & Steere.** 5-161.....c. 6-259; 7-537  
**Hunt.** 5-493.....c. 9-95  
**Hunt v. Hornell.** 5-433.....c. 10-301  
**Hussman.** 2-437.....c. 5-388, 390; 10-557  
  
**Independent Ins. Co.** 6-260.....c. 6-472, 496; 7-399; 10-331  
**Innes v. Carpenter.** 4-412.....c. 6-300; 9-60  
**Irving v. Hughes.** 2-62.....c. 4-518; 6-30, 183  
**Isidor.** 1-264.....c. 5-120  
**Jacoby.** 1-118.....c. 6-29; 7-437  
**Jaycox & Green.** 7-140.....c. 7-600  
     "      "      7-303.....c. 9-377  
     "      "      8-241.....c. 10-83  
**Jersey City Window Glass Co.** 1-426.....c. 1-522; 2-251; 6-88, 245, 340  
**Jewett.** 1-491.....c. 8-437; 9-376  
**Jobbins, et al. v. Montague, et al.** 6-509.....c. 7-213, 512  
**Joliet I. & S. Co.** 10-60.....c. 10-454  
**Jones.** 2-59.....c. 5-48, 50; 6-81  
**Jones.** 6-386.....c. 10-212  
**Jones v. Leach.** 1-595.....c. 4-546; 6-30; 7-428, 429; 8-328, 394  
**Jordan.** 8-180.....c. 8-404; 10-428  
**Joslyn.** 8-473.....c. 4-365; 6-507; 9-432  
  
**Kahley.** 4-378.....c. 6-159; 8-290; 9-310; 10-557  
     "      6-189.....c. 6-577; 7-188  
**Keach.** 3-13.....c. 7-597  
**Kean.** 8-367.....c. 8-404; 10-428  
**Kelly v. Strange.** 3-8.....c. 5-286; 10-502  
**Kenyon & Fenton.** 6-238.....c. 6-344  
**Kerosene Oil Co.** 2-528.....c. 2-297; 6-30, 420, 483; 7-428, 429, 434, 539  
     "      "      8-125.....c. 5-77, 815; 8-394; 9-310  
**Kerr.** 2-388.....c. 2-471; 6-419; 7-93; 10-346  
**Kimball.** 1-193.....c. 5-352; 2-29, 205  
     "      2-204.....c. 2-483; 10-301  
     "      2-483.....c. 2-483; 8-316  
**Kington.** 3-446.....c. 6-82  
**Kingsbury.** 3-318.....c. 4-495; 9-4  
**Kingsley.** 1-329.....c. 6-327  
**Kinthead.** 7-439.....c. 8-384  
**Kintzing.** 3-217.....c. 6-183  
**Kipp.** 4-593.....c. 9-215  
**Knickerbocker Ins. Co. v. Comstock.** 8-145 c. 9-85, 295  
**Knight.** 8-436.....c. 9-376  
**Knight v. Cheney.** 5-305.....c. 6-8, 249, 250, 570; 7-159, 496; 8-150.  
**Kohlsaat v. Hoguet et al.** 5-159.....c. 6-128  
**Krogman.** 5-116.....c. 9-46  
  
**Lady Bryan Mining Co.** 4-394.....c. 8-116  
     "      "      "      6-252.....c. 8-394  
**Lake Superior Canal & R. R. Co.** 7-376.....c. 10-80  
**Lambert.** 2-426.....c. 7-432; 8-394

- Langley. 1-559....c. 2-452, 487, 685 ; 4-359,  
711 ; 5-88 ; 6-45, 881 ; 7-437  
" v. Perry. 2-596.....c. 4-299, 458,  
711 ; 6-481  
Lane. 2-309.....c. 4-545 ; 6-281 ; 7-429  
Lanier. 2-154 ....c. 4-70 ; 7-542, 543, 544  
Lathrop. 3-410.....c. 5-43  
Lawson. 2-113.....c. 5-7 ; 7-344  
Leachman. 1-391.....c. 1-554  
Lee. 3-218.....c. 7-429  
Leeds. 1-521.....c. 6-87 ; 6-340  
Leonard. 4-562.....c. 8-519  
Levy. 1-136....c. 5-50 ; 6-81 ; 7-159 ; 8-92  
" 1-327.....,....c. 7-161  
Lewis. 3-621.....c. 5-415  
Linn et al. v. Smith. 4-46.....c. 6-188  
Little. 1-341.....c. 2-76 ; 5-48, 113  
Littlefield. 3-57.....c. 6-196  
" v. Delaware & Hudson Canal  
Co. 4-258....c. 5-236, 239 ; 6-15 ; 7-155,  
156, 163, 167 ; 9-534  
Locke. 2-382....c. 4-533 ; 5-415 ; 10-125  
Loder. 2-515.....c. 4-710  
Lord. 5-318.....c. 10-558  
Lowenstein. 2-306....c. 4-215 ; 5-90 ; 6-87,  
245, 300  
" 3-269.....c. 9-89  
Lukins v. Aird. 2-81.....c. 5-389 ; 8-122  
  
Macintire. 1-11.....c. 1-190 ; 7-543  
Magee. 1-522.....c. 1-614  
Mallory. 4-153.....c. 5-478 ; 9-348  
" 6-22.....c. 6-484 ; 7-158 ;  
8-22, 394 ; 10-342  
Manley. 3-291.....c. 10-557  
March v. Heaton. 2-180.....c. 7-23  
Markson & Spaulding v. Heany, 4-511....  
c. 6-185, 517, 559,  
568 ; 7-150, 210,  
480, 511 ; 9-310  
Marshall v. Knox. 8-97.....c. 8-527, 558 ;  
9-311  
Martin v. Berry. 2-629.....c. 4-712 ; 5-88  
7-437  
" v. Smith. 4-274....c. 5-389 ; 6-157 ;  
7-545, 549  
Massey v. Allen. 7-401....c. 8-120 ; 10-559  
Masterson. 4-553.....c. 6-570  
Mawson. 1-271....c. 2-334 ; 5-121 ; 10-93  
Mays v. The Manufacturers' National Bank  
of Philadelphia. 4-446.....c. 9-28  
McBrien. 2-197....c. 4-71, 72 ; 7-543, 544  
McClellan. 1-389.....c. 7-429 ; 9-310 ;  
10-502  
McDermott Patent Bolt Manufacturing Co.  
3-128.....c. 4-215 ; 5-245, 300 ; 9-60  
McDonough v. Rafferty. 3-221....c. 4-495 ;  
8-289  
McGilton. 7-294.....c. 8-394  
McIntosh. 2-506.....c. 6-505  
McKay & Aldus. 3-51.....c. 10-345  
McLean v. Brown. 4-585.....c. 6-349  
McNaughton. 8-44.....c. 10-258  
McNair. 2-219.....c. 6-397  
McVey. 2-257.....c. 5-121  
Meade v. Bank of Fayetteville. 2-173....  
c. 7-225 ; 9-379  
Mebane. 3-347.....c. 9-310  
Merchants' Insurance Co. 6-43....c. 6-170,  
271 ; 7-159 ; 8-394 ; 10-343  
Merchants' Bank v. Truax. 1-545.....  
c. 2-367, 494  
Melick. 4-97.....c. 8-437 ; 9-410  
Merrick. 7-459...c. 10-345  
Merrifield. 3-98.....c. 4-33  
Meyer v. Aurora Ins. Co. 7-191....c. 10-286  
Metzler et al. 1-38.....c. 6-183  
Migel. 2-481.....c. 8-463 ; 10-287, 356  
Miller v. O'Brien. 9-26.....c. 9-36  
Mitchell. 3-441.....c. 9-410  
" 3-47.....c. 10-284  
Montgomery. 3-187.....c. 7-22  
" 3-374....c. 4-57, 419 ; 5-436 ;  
7-93  
" 3-426,.....c. 10-83  
" 3-429....c. 10-83  
Moore. 1-470.....c. 5-216 ; 8-87  
Moore & Bro. v. Harley. 4-242....c. 5-166  
Morford. 1-211.....c. 5-48, 49, 50  
Morgan v. Mastick. 2-521.....c. 4-458  
" et al. v. Thornhill et al. 5-1.....  
c. 5-234 ; 6-7 ; 7-150, 211, 357, 495 ;  
8-100, 147, 531 ; 9-7, 293, 311, 534  
Morse. 7-56.....c. 8-59  
Moseley, Wells & Co. 8-208.....c. 9-370  
Muller & Brentano. 3-329.....c. 4-533 ;  
6-258 ; 7-537  
Murdock. 3-146.....c. 6-174  
Meyers. 1-581 .....c. 5-389  
  
Neal. 2-241....c. 2-464 ; 4-37, 519, 522, 557 ;  
5-77 ; 7-539  
Newman. 2-302.....c. 7-597  
New York Steamship Co. 2-554.....  
c. 7-22, 142  
New York Kerosene Oil Co. 2-528.....  
c. 2-297 ; 6-30, 420, 483 ;  
7-428, 429, 434, 539

- New York Kerosene Oil Co. 3-125....c. 5-77,  
 315; 8-394; 9-310  
 Nicodemus. 3-230.....c. 4-215; 6-300;  
 9-60  
 Noakes. 1-592 .....c. 2-434  
 Norria. 4-35.....c. 5-117  
  
 Obear. 10-151.....c. 10-452  
 O'Brien. 1-176.....c. 8-384  
 Odell v. Wooten. 4-183.....c. 6-85  
 Okell. 1-308.....c. 6-397  
 Olmstead. 4-240.....c. 10-100, 102, 497  
 Orem & Co. v. Harley. 3-263.....c. 6-259  
 Orne. 1-57.....c. 7-63; 8-92  
 " 1-79.....c. 5-48, 50; 6-81, 203  
 Oaimette. 3-566. ....c. 8-119; 9-281  
  
 Palmer. 3-283.....c. 7-161  
 Patterson. 1-100.....c. 5-50; 6-81  
 " 1-125.....c. 4-662, 665; 6-291,  
 419; 7-23, 23; 8-92  
 " 1-147.....c. 1-552  
 " 1-307.....c. 2-32, 145, 223  
 Pierce & Holbrook. 3-258.....c. 6-483, 381  
 Pegues. 3-80.....c. 9-48  
 Peiper v. Harmer. 5-252...c. 6-562; 8-196  
 Penn. 5-30.....c. 6-560  
 Pennington v. Sale. 1-572...c. 4-546; 6-30,  
 420  
 People's Mail Steamship Co. 2-553.....  
 c. 6-420; 7-428, 429, 432, 539  
 Perdue. 2-183.....c. 2-466  
 Perkins v. Gay. 3-772.....c. 9-75  
 Perrin. 7-283.....c. 10-559  
 Perry. 1-220.....c. 5-48, 49  
 Pettis. 2-44.....c. 8-463; 2-32  
 Phelps v. Clasen. 3-87.....c. 8-386  
 Phelps v. Sellick. 3-390.....c. 9-383, 419  
 Pickering. 10-208.....c. 10-452  
 Potter v. Coggeshall. 4-78.....c. 5-154;  
 10-364  
 Powell. 2-45.....c. 4-155  
 Pratt v. Curtis. 6-139.....c. 7-104  
 Preston. 6-545.....c. 7-351  
 Price & Miller. 3-514.....c. 9-414; 10-447  
 Princeton. 1-618.....c. 2-566; 4-56  
 Puffer. 2-43....c. 2-145; 5-52, 121; 7-544  
 Pulver. 1-46.....c. 4-31; 7-159  
 Purvis. 1-163.....c. 2-537  
 Pusey. 7-45.....c. 8-291  
  
 Randall. 3-18.....c. 4-495; 6-483; 8-519;  
 9-348  
 Rankin et al. v. Flo., At. & Gulf Central  
 Railroad. 1-647....c. 5-104, 244; 6-186;  
 7-167  
 Raffauf. 10-69.....c. 10-452  
 Ratcliffe. 1-400.....c. 5-49  
 Rathbone. 1-324.....c. 1-576  
 " 1-536.....c. 5-389  
 Ray. 1-203.....c. 1-395; 6-327; 7-161  
 Raynor. 7-527.....c. 10-259  
 Reed. 1-1.....c. 7-489  
 " 2-9.....c. 4-260; 7-176  
 Regnes. 3-80.....c. 9-48  
 Richardson. 2-202....c. 4-520; 5-35; 6-517,  
 559; 7-162, 209, 512  
 Rison v. Knapp. 4-349.....c. 10-558  
 Richter. 4-222.....c. 8-192  
 Robinson. 1-285.....c. 4-537  
 " 2-341....c. 2-482; 8-462; 10-301  
 Rogers. 3-564.....c. 4-105; 10-301  
 Rolling Mill Co. 3-590.....c. 10-102, 497  
 Rosenberg. 2-236.....c. 2-482; 4-10, 167;  
 10-285, 301, 358  
 " 3-74.c.3-130, 7-22; 8-394; 10-345, 429  
 Rosenfeld. 1-319.....c. 4-450; 7-542; 8-92  
 " 1-575....c. 2-439; 4-389; 5-415,  
 430, 432; 10-301  
 " 2-117....c. 2-654; 5-192; 7-142  
 Rosenthal. 10-191.....c. 10-452  
 Ruddick v. Billing. 3-61.....c. 7-167  
 Ruehle. 2-577.....c. 4-149; 5-122; 6-185;  
 7-318; 8-265, 394  
 Rupp. 4-95.....c. 9-273; 10-147  
 Thomas. 10-151.....c. 10-452  
  
 Sacchi. 6-497.....c. 7-438  
 Safe Deposit Co. 7-393.....c. 9-86; 10-331  
 Salmons. 2-56.....c. 7-429; 9-310  
 Samson v. Burton. 6-403.....c. 8-394  
 Sawyer v. Hoag. 9-145.....c. 10-233  
 Scammon. 10-67.....c. 10-72, 74, 454  
 Scammon v. Cole. 3-393.....c. 4-495;  
 7-524; 10-558  
 " " 5-257...c. 6-55; 7-524;  
 9-4; 10-177  
 Schick. 1-177.....c. 7-77  
 Schnepf. 1-190.....c. 4-546; 6-29, 419;  
 7-428, 429; 8-21; 9-310; 10-346  
 Schwab. 2-488.....c. 7-22  
 Scott. 4-414 .....c. 6-536; 9-215  
 Scull. 10-166.....c. 10-420  
 Seckerdorf. 1-626.....c. 10-93  
 Second Bank of Leavenworth v. Hunt.  
 4-616....c. 6-14; 10-558  
 Sedgwick v. Casey. 4-496.....c. 5-118;  
 6-157; 7-357; 9-39



- Sedgwick v. Place. 1-673.....c. 2-380;  
4-722; 8-174; 10-345  
" " 3-139, 302.....c. 6-486  
" " 5-168.....c. 6-140  
Seymour. 1-29.....c. 2-32, 145, 208, 240;  
4-166; 5-352; 10-301  
Shafer. 2-586.....c. 4-545; 7-429  
" v. Fitchery & Thomas. 4-548.....  
c. 6-160  
Shearman v. Bingham. 5-34.....c. 6-517;  
7-210, 512  
" " 7-490.....c. 8-196  
Sheppard. 1-439.....c. 4-688; 6-327; 7-460  
" 3-172.....c. 5-113  
Sherwood. 1-845.....c. 5-255  
Shower. 6-586.....c. 7-605; 10-194  
Sidle. 2-220.....c. 8-346  
Sigsby v. Willis. 3-207.....c. 6-186  
Silverman. 4-522.....c. 6-33; 10-558  
Skelly. 5-214.....c. 8-520  
Slichter. 2-336.....c. 8-384  
Smith. 1-599.....c. 10-346  
" 2-297.....c. 5-122  
" 3-377.....c. 4-531; 5-384; 6-38,  
483; 8-387; 10-558  
" 8-401.....c. 9-93; 10-428  
" v. Buchanan. 4-397.....c. 5-209,  
274, 333; 7-524  
" " " 7-513.....c. 9-106, 118,  
449, 470, 475; 10-558  
Smith v. Crawford. 9-38.....c. 10-463  
" " Kehr. 7-97.....c. 8-394; 9-377  
" " Mason. 6-1.....c. 6-124, 249,  
250, 483, 571; 7-159, 203, 496;  
8-23; 9-42, 401  
Snedaker. 3-629.....c. 4-169; 6-31, 186;  
7-430; 8-394  
Sohoo. 3-215.....c. 6-87, 340  
Solis. 3-761.....c. 6-387, 576  
Solomon. 2-285.....c. 2-369; 7-597  
Son. 1-310.....c. 6-196  
Stansell. 6-183.....c. 8-394; 9-390  
State v. Dewey et al. 5-466.....c. 8-196; 10-328  
Steadman. 8-319.....c. 9-183  
Stephens. 5-298.....c. 6-541; 7-351; 9-377  
Stevens. 5-112.....c. 9-410  
Stewart. 1-278.....c. 7-429; 9-310; 10-502  
Stewart v. Isidor. 1-485.....c. 4-150;  
6-188; 8-277; 9-390; 10-83  
Stillwell. 2-526.....c. 4-371  
Stobaugh v. Mills. 8-361.....c. 10-558  
Stowe. 6-429.....c. 10-560  
Strauss. 2-48.....c. 7-161, 464  
Street v. Dawson. 4-207.....c. 5-209  
Stubbs. 4-376.....c. 6-383; 7-350  
Sturgeon. 1-498.....c. 4-562  
Sutherland. 1-531.....c. 4-444, 532; 5-331;  
8-387; 9-86, 348; 10-558  
Sweatt v. R. R. Co. 5-234.....c. 6-260;  
7-167, 290; 10-86  
Swope et al. v. Arnold. 5-148.....c. 6-160  
Talbot. 2-280.....c. 8-453  
Tallman. 1-462.....c. 1-576; 2-144; 10-93  
Tanner. 1-316.....c. 1-369, 552; 7-542  
Terry v. Cleaver. 4-126.....c. 7-93  
The Knickerbocker Ins. Company v. Com-  
stock. 8-145.....c. 9-85, 295  
The Merch. Ins. Co. 6-43.....c. 6-170, 271,  
7-159; 8-394; 10-343  
Thomas. 10-15.....c. 10-452  
Thompson. 1-323.....c. 10-93  
" 3-185.....c. 6-87, 340, 349  
Thornhill v. Bank. 3-435.....c. 4-712  
" " " 5-367.....c. 6-170, 261,  
271  
Thornton. 2-189.....c. 7-344  
Tiffany v. Boatmen Inst. 9-245.....c. 10-519  
Tiffany v. Lucas. 8-49.....c. 10-126, 185  
Tonkin & Trewartha. 4-52.....c. 4-231,  
423, 425, 596  
Toof v. Martin. 6-49.....c. 7-176, 178, 455,  
525; 8-284, 364; 9-317, 344; 10-23, 558  
Traders' Bank, Chicago. 3-498.....c. 7-93  
Traders' Nat. Bank. 6-353.....c. 10-559  
Troy Woolen Co. 6-16.....c. 6-213  
Tuttle v. Truax. 1-601.....c. 9-4  
Van Nostrand v. Barr. 2-485.....c. 4-712;  
5-88  
Vetterlien. 4-599.....c. 7-543  
Vickery. 3-696.....c. 10-278  
Vogel. 2-427.....c. 4-710; 6-421; 7-428,  
429, 539; 8-21, 380, 394  
Vogle v. Lathrop. 4-439.....c. 5-209, 330  
Vogler. 8-132.....c. 8-181  
Wadsworth v. Tyler. 2-316.....c. 4-458,  
605; 8-291; 9-253  
Waite. 1-373.....c. 9-410  
" 2-452.....c. 2-489  
Walbrun v. Babbitt 9-1.....c. 10-186, 558  
Wallace. 2-134.....c. 6-30, 419; 7-428,  
539; 8-21  
Wallace v. Conrad. 3-41.....c. 6-188;  
8-277; 9-390  
Watts. 2-447.....c. 5-48, 49, 50; 7-159  
Way v. Howe. 4-677.....c. 4-684, 688

Webb & Taylor. 3-720... ..c. 6-190, 577	Wilson v. City Bank. 5-270...c. 7-487, 525
Weikert. 3-27.....c. 6-87, 340	“ “ “ 9-97...c. 9-356, 449,
Welch. 5-348.....c. 7-344	470, 474; 10-104, 184, 232, 250
Wells. 3-371.....c. 5-209; 7-93	Winkens. 2-349....c. 5-113; 8-437; 10-331
White. 2-590.....c. 2-670	Winn. 1-499.....c. 2-502; 4-149; 6-186
White v. Raftery. 3-221.....c. 8-289	Winter. 1-481.....c. 4-546
Whitehead. 2-599....c. 9-377	Winter v. Railroad Co. 7-289....c. 10-86
Whitehouse. 4-63.....c. 8-462	Woods, Forsyth v. 5-78...c. 9-46, 311, 380
Williams. 2-83.....c. 2-453, 490; 7-22	Wright. 1-393.....c. 4-537, 562
“ 2-229.c. 6-393; 7-43, 592; 8-240	“ 2-142.....c. 5-329; 10-301
“ 3-286....c. 5-165; 6-37; 9-410	Wylie. 2-137.....c. 2-434
Wilmot. 2-214.....c. 2-399, 311	Wynne. 4-23.....c. 4-77, 605; 5-24, 221;
Wilson v. Brinkman et al. 2-468.....	6-502, 505; 7-10; 8-220, 291;
c. 4-495; 5-209	9-388, 417; 10-418

## TABLE OF CASES CRITICISED.

---

THIS Table is prepared as a reference to every case reported which is criticised, modified, reviewed, reversed, or affirmed, with a short abstract of the criticism, the name of the Judge, and of the Court. Where the *language* of the Judge is given, quotation marks are used.

<p><b>ADAMS, J. L.</b> U. S. Dis. Ct.....2-272          " Gives the court a discretion, and perhaps warrants a Register in calling for a formal petition or affidavit" (where creditor applies for examination of bankrupt). In re A. J. Solis, Dayton, Register, U. S. Dis. Ct.....4-69          " The effect of the decision was merely that the Register had a discretion to require good cause for granting the order by petition or affidavit duly verified." Blatchford, J. Same case.....4-72</p> <p><b>ADAMS, R. A.</b> U. S. Dis. Ct.....8-561          Approved In re Rainsford, Husbands, Referee, U. S. Dis. Ct.....5-389</p> <p><b>ADAMS V. BOSTON, HARTFORD &amp; ERIE R. R. Co.</b> U. S. Dis. Ct.....4-314          Affirmed, Sweatt v. Boston, Hartford &amp; Erie R. R. Co. et al. U. S. Cir. Ct.          5-234</p> <p><b>ALLEN, ADMINISTRATRIX, V. SOLDIERS' BUS. AG. &amp; DES. CO.</b> N. Y. Supreme Ct.....4-537          Approved in Meyer v. Aurora Ins. Co., Tree, J., U. S. Cir. Ct.....7-192</p> <p><b>APPLETON V. BOWLES ET AL.</b> N. Y. Supreme Ct.....9-354          Reversed. N. Y. Ct. of Appeals.10-515</p> <p><b>EVERY V. JOHANN.</b> U. S. Dis. Ct..3-144          Disapproved In re Sheean, Longyear, J., U. S. Dis. Ct... 8-351</p> <p><b>BABBITT, ETC. V. WALBRUN &amp; Co.</b> U. S. Cir. Ct.....4-121; 6-359</p>	<p>Affirmed, Walbrun et al v. Babbitt, U. S. Supreme Ct.....9-1</p> <p><b>BACKMAN, ASSIGNEE, V. PACKARD.</b> U. S. Cir. Ct.....7-353          Approved in Smith v. Crawford, Blatchford, J., U. S. Dis. Ct.....9-47</p> <p><b>BALDWIN V. WILDER.</b> U. S. Cir. Ct...6-85          Distinguished In re Hercules Mut. Life As. Society, Blatchford, J., U. S. Dis. Ct.....6-344</p> <p><b>BANK OF LEAVENWORTH V. HUNT.</b>          See "Second Nat. Bank of Leavenworth, &amp;c., v. Hunt, &amp;c."</p> <p><b>BARSTOW V. PECKHAM, ETC., ET AL.</b> U. S. Dis. Ct .....5-73          Reconsidered, and rulings retracted so far as in conflict with those In re Evans, Lowells, Sec. 526; Ferguson, &amp;c., v. Peckham, Knowles, J., U. S. Dis. Ct.          6-570, 572</p> <p><b>BEALL V. HARRELL.</b> U. S. Cir. Ct...7-400          Affirmed, Harrell v. Beall, U. S. Supreme Ct.....9-49</p> <p><b>BEAN, ETC., V. BROOKMIRE ET AL.</b> U. S. Dis. Ct.....4-196          Approved In re Dow, Shepley, J., U. S. Cir. Ct.....6-15</p> <p><b>BIGELOW.</b> U. S. Dis. Ct.....1-632          Implies that to prevent a waiver of mortgagee's lien by proving debt, the lien should be stated. In re Stansell, Emmons, J., U. S. Cir. Ct.....6-185          Case compared, same.....6-187</p> <p><b>BILL V. BECKWORTH.</b> U. S. Cir. Ct..2-241</p>
--	---

- Contains what seems to be the natural construction of the 25th section. *Foster v. Ames, Lowell, J., U. S. Cir. Ct.* 2-464
- BINGHAM V. CLAFLIN.** Wisconsin Supreme Ct. .... 7-412
- The opinion that a State Court should not entertain jurisdiction of any action brought by the assignee for the recovery of the property of the bankrupt, disapproved in *Cook v. Waters, Grover, J., N. Y. Ct. of Appeals.* .... 9-162
- BLACK & SECOR.** U. S. Dis. Ct. .... 1-353
- The opinion that a debtor who suffers his property to be taken on legal process, and sold for the payment of a debt due to a creditor, does thereby make a transfer and conveyance of his property within the meaning of the act approved in *re Wright, Field, J., U. S. Dis. Ct.* 2-492
- Approved upon the same point in *Haskell, &c., v. Ingalls, Fox, J., U. S. Dis. Ct.* .... 5-208
- BRIDGMAN, S. D.** U. S. Dis. Ct. .... 1-312
- Presents an intelligent outline of the practice in proving this class of claims (secured debts). In *re Stansell, Emmons, J., U. S. Cir. Ct.* .... 6-185
- BROCK V. HOPPOCK.** U. S. Dis. Ct. .... 2-7
- The ruling that the burden of proof is upon the creditor, and he must establish his debt before proceeding to show acts of bankruptcy, doubted in *re Skelley, Blodgett, J., U. S. Dis. Ct.* .... 5-216
- Disapproved upon the same point, in *re Price & Miller, Longyear, J., U. S. Dis. Ct.* .... 8-520
- BUCHANAN ET AL. V. SMITH, ETC.** U. S. Supreme Ct. .... 7-513
- Discriminated in *re Wilson v. City Bank of St. Paul, Miller, J.* .... 9-106
- The view of the effect of the assignment approved, Opinion of Attorney-General. .... 9-118
- Compared with *Wilson v. City Bank of St. Paul; Britton v. Payen, &c., Blatchford, J., U. S. Dis. Ct.* .... 9-449
- Compared with *Wilson v. City Bank of St. Paul; Partridge v. Dearborn, &c., Lowell, J., U. S. Dis. Ct.* .... 9-475
- BURKHOLDER V. STUMP.** U. S. Dis. Ct. 4-597
- Approved by implication in *re Cohn, Ballard, J., U. S. Dis. Ct.* .... 6-383
- CAMPBELL, G. W., v. THE TRADERS' NAT. BANK OF CHICAGO ET AL.** U. S. Dis. Ct. .... 3-498
- Affirmed, *Traders' Nat. Bank of Chicago v. Campbell, &c., U. S. Supreme Ct.* .... 6-353
- CAMPBELL, HUGH.** U. S. Dis. Ct. .... 1-165
- Settles adversely the question whether the District Court has jurisdiction to go behind the judgment of the State Court, and inquire into the consideration of the debt upon which the judgment is founded. *McKinsey & Brown, &c., v. Harding, Cobbs, Register, U. S. Dis. Ct.* .... 4-41
- Approved as to the jurisdiction of the State Courts, until at least the jurisdiction of the Federal Court has been called into exercise. *Reed Bros. & Co. v. Taylor et al., Cole, J., Supreme Ct., Iowa.* .... 4-711
- Disapproved in *re Mallory.*
- U. S. Cir. Ct. affirmed the decision of the District Court, *Field, J.* .... 6-32
- Disapproved in *re Brinkman, Blatchford, J., U. S. Dis. Ct.* .... 7-438
- CATLIN, ETC., v. FOSTER.** U. S. Dis. Ct. 8-540
- Doubted in *re Cohn, Ballard, J., U. S. Dist. Court.* .... 6-382
- CHANDLER.** U. S. Dis. Ct. .... 4-213
- The construction, that Congress, in saying that any person belonging to one of certain designated classes should be deemed a bankrupt, if he failed to pay his commercial paper, simply referred to a well-known and conclusive test of insolvency.
- Approved in *re Carter, Gresham, J., U. S. Dist. Ct.* .... 6-301
- Approved as to the applicability of the act to accommodation indorsers in *re Clemens, Treat, J., U. S. Dist. Court.* 8-233
- Disapproved as to accommodation endorsers in *re Clemens, Dillon, J., U. S. Cir. Court.* .... 9-61
- CLEMENS, JOHN.** U. S. Dis. Ct. .... 8-279
- Reversed, U. S. Cir. Ct. .... 9-57
- COX, ETC., v. WILDER.** U. S. Dist. Court. 5-443
- Reversed, U. S. Cir. Ct. .... 7-241
- CRAFT, A. W.** U. S. Dis. Ct. .... 1-373
- Affirmed, U. S. Cir. Ct. .... 2-111
- CRAFT, A. W.** U. S. Dis. Ct. .... 1-378

- The principle of the decision as to suffering property to be taken on legal process does, not appear to have been considered in the affirmance in the Circuit of the allowance of an amendment to the petition. In re Dunkle & Dreisbach, Mason, Register, U. S. Dis. Ct. 7-92
- CRAWFORD.** U. S. Dis. Ct. .... 3-698  
Disapproved In re Hennocksburg & Block, Hall, J., U. S. Dis. Ct. .... 7-43
- DAGGETT ET AL.** U. S. Dis. Ct. .... 8-287  
Affirmed, U. S. Cir. Ct. .... 8-433
- DARBY.** U. S. Dis. Ct. .... 4-309  
Approved substantially In re Trowbridge, Longyear, J., U. S. Dis. Ct. 9-277
- DARBY'S TRUSTEES V. BOATMAN'S SAVINGS INSTITUTION.** U. S. Cir. Court. 4-600  
Reversed, Tiffany v. Boatman's Savings Institution, U. S. Supreme Court. 9-245
- DARBY'S TRUSTEES V. LUCAS.** U. S. Dis. Court. .... 5-437  
Affirmed, Tiffany v. Lucas, U. S. Supreme Court. .... 8-49
- DECKERT.** U. S. Cir. Ct. .... 10-1  
Disapproved In re Jordan, Murray, Register, U. S. Dis. Ct. .... 10-428
- DEY, J. R.** U. S. Dis. Ct. .... 3-305  
Disapproved In re Coulter, Deady, J., U. S. Dis. Ct. .... 5-70
- DIBBLEE ET AL.** U. S. Dis. Ct. .... 2-617  
Approved as to the point that an adjudication of bankruptcy is not conclusive evidence as to anything beyond the commission of the acts of bankruptcy. In re Dunkle & Dreisbach, Mason, Register, U. S. Dis. Ct. .... 7-78
- DOLE, N.** U. S. Dis. Ct. .... 7-538  
Reversed, U. S. Cir. Ct. .... 9-193
- DOLE, N.** U. S. Cir. Ct. .... 9-198  
Approved In re Witkowski, Hill, J., U. S. Dis. Ct. .... 10-212
- DOWNING, WM.** U. S. Cir. Ct. .... 8-749  
Examined and doubted In re Isaacs & Cohn, Hoffman, J., U. S. Cir. Ct. .... 6-99  
Examined In re Long & Co., Blatchford, J., U. S. Dis. Ct. .... 9-288  
Understood to imply that Congress did not intend to change the rule in equity, viz.: where there is no joint estate and no solvent partners, all the creditors, joint and separate, shall share pro rata in the estate of the bankrupt partners, and this construction approved In re Rice, Withey, J., U. S. Dis. Ct. .... 9-374
- DUGUID ET AL. V. EDWARDS, JR., ET AL.** N. Y. Supreme Ct. Gen. Term. 50 Barb.-288  
Approved In re Kimball, Blatchford, J., U. S. Dis. Ct. .... 2-208
- EVANS, T. C.** U. S. Dis. Ct. .... 8-261  
Though holding that the mortgage was clearly invalid, this point was not much discussed in the opinion, the real question determined appearing to be whether, under the 39th section, the attorneys (who had received from the bankrupt, to secure the payment for their services in the proceedings, a mortgage covering the items in his schedule) would even be allowed to prove their debt. In re Mallory, Hill-yer, J., U. S. Dis. Ct. .... 4-156
- FOSTER, ETC., V. HACKLEY & SONS.** U. S. Cir. Ct. .... 2-406  
Shows that under the present bankrupt act there is no discrimination between cases of voluntary and involuntary preference. Wilson v. Brinkman et al., Treat, J., U. S. Dis. Ct. .... 2-471
- FREDERICK, JOHN.** U. S. Dis. Court. 8-465  
The construction of the word "assets" in section thirty-three approved In re Webb & Taylor, Blatchford, J., U. S. Dis. Ct. .... 8-720  
What is said upon the construction of section thirty-three seems to have been unnecessary, and therefore not binding as authority. In re Kahley et al., Hopkins, J., U. S. Dis. Ct. .... 6-190
- FREDENBURG.** U. S. Dis. Ct. .... 1-268  
Approved In re Feinberg, Blatchford, J., U. S. Dis. Ct. .... 2-245
- GALLISON ET AL.** U. S. Dis. Ct. .... 5-353  
Doubted In re Swift, Williams, Register, U. S. Dis. Ct. .... 7-592, 594
- GARDNER, ETC., V. COOK, ETC.** U. S. Dis. Ct. .... 7-346  
Approved In re Archenbrow, Long-year, J., U. S. Dis. Ct. .... 8-430

GAY. U. S. Dis. Ct.....2-358  
 Approved In re Louis & Rosenham,  
 Blatchford, J., U. S. Dis. Ct.....2-452  
 GODDARD, ETC., v. WEAVER. U. S. Cir.  
 Ct.....6-440

Succinctly and clearly states what in-  
 terest vests in the assignee. In re  
 Steadman, Erskine, J., U. S. Dis. Ct.  
 8-328

GOODALL, ETC., v. TUTTLE. U. S. Dis. Ct.  
 7-198

The weight of authority is the other  
 way. Lamb, &c., v. Damron, Nelson, J.,  
 U. S. Dis. Ct. ....7-512

GRAHAM, ETC., v. STARK ET AL. U. S. Dis.  
 Court.....8-857

The point as to the four months' limi-  
 tation is not adverted to. Hubbard et al.  
 v. Allaire Works, Blatchford, J., U. S.  
 Cir. Ct.....4-625

GREENFIELD, THOMAS. U. S. Dis. Court.  
 2-311

Has been followed by me for the sake  
 of uniformity of practice, until the Cir-  
 cuit Court here should pass upon the  
 question. In re Gallison et al., Lowell,  
 J., U. S. Dis. Ct.....5-353

GRIFFITHS, CHAS. W. U. S. Dis. Court.  
 3-731

Approved In re Potter et al., Knowles,  
 J., U. S. Dis. Ct.....4-77

GUNN v. BARRY. U. S. Supreme Court.  
 8-1

Examined In re Jordan, Dick, J., U.  
 S. Dis. Ct.....8-185

Does not touch, in the remotest degree,  
 the power of Congress to disturb vested  
 rights, or impair the obligation of con-  
 tracts, so far as the same may result  
 from the due exercise of its express  
 power to establish a uniform system of  
 bankruptcy. In re Kean et al., Rives,  
 J., U. S. Dis. Ct....8-368

Cannot be invoked as having any bear-  
 ing on or application to laws of Congress,  
 especially to laws on the subject of  
 bankruptcies. In re Everitt, Erskine,  
 J., U. S. Dis. Ct.....9-93

HAAKE, J. C. U. S. Dis. Ct.....7-61

Disapproved In re Town et al.,  
 Clarke, Register, U. S. District Court.  
 8-41, 42

Approved as applicable to a case

where there is no surplus. Same case,  
 Longyear, J.....8-44

HARDY ET AL. v. CLARK & BININGER. U.  
 S. Dis. Ct.....8-385  
 Affirmed, U. S. Cir. Ct.....4-263

HARTOUGH, P. C. U. S. Dis. Ct....8-422

Overruled, Hunt, Tillinghast & Co. v.  
 Pooke & Steere, Knowles, J., U. S. Dis.  
 Ct.....5-105

HARVEY, ETC., v. CRANE. U. S. Cir. Ct.  
 5-218

The question was substantially what  
 would have been the effect if possession  
 had been transferred without a mort-  
 gage. As we understand the Opinion,  
 the possession was left to depend on the  
 validity of the actual transfer made  
 twenty-three days before filing the peti-  
 tion, and this transfer was invalid under  
 the bankrupt act. We do not regard  
 the case as in conflict with the views we  
 have expressed. Seaver v. Spink,  
 Lawrence, J., Supreme Court of  
 Illinois.....8-220

HEIRSCHBERG, LOUISA. U. S. Dis. Ct.  
 1-642

Overruled In re Comstock & Young,  
 Withey, J., U. S. Dis. Ct.....5-192

HUNT, TILLINGHAST & CO. v. POOKE ET  
 AL. U. S. Dis. Ct.....5-161

Approved, except as to the assertion  
 that the bankrupt act does not, by its  
 terms, require the petition to be verified  
 by the oath of the petitioner, or be sub-  
 scribed by the petitioner himself. In re  
 Butterfield, Hawley, J., U. S. Supreme  
 Court, Utah Territory .....6-259

INNES v. CARPENTER. U. S. Dis. Court.  
 4-412

Approved In re Clemens, Dillon, J.,  
 U. S. Cir. Ct.....9-60

JEWETT, FRED. U. S. Dis. Ct.....1-491

Does not seem to rest on the reason  
 either of the rule or the exception. The  
 weight of authority preponderates  
 greatly against the decision. In re  
 Byrne, Harper, Register, U. S. Dis. Ct.  
 1-469

JOBBS, ETC., v. MONTAGUE ET AL. U.  
 S. Dis. Ct.....6-509

Disapproved, Goodall, &c. v. Tuttle,  
 Hopkins, J., U. S. Dis. Ct.....7-218

**JOSLYN ET AL.** U. S. Dis. Ct. .... 3-473  
 Approved as a carefully considered case. In re Butler, Harper, Register, U. S. Dis. Ct. .... 6-507

**KAHLEY ET AL.** U. S. Dis. Ct. .... 6-189  
 Disapproved In re Vinton, Knowles, J., U. S. Dis. Ct. .... 7-139

**KIMBALL, G. W.** U. S. Cir. Ct. .... 2-354  
 Disapproved, Grover & Baker v. Clinton, Hopkins, J., U. S. Circuit Ct. .... 8-316

**KIMBALL, G. W.** U. S. Dis. Ct. .... 2-204  
 Affirmed, U. S. Cir. Ct. .... 2-354

**LADY BRYAN MINING CO.** U. S. Dis. Ct. .... 4-144

Affirmed, U. S. Cir. Ct. .... 4-394  
**LANGLEY, WM. H.** U. S. Dis. Ct. .... 1-559  
 Reversed in Langley v. Perry, U. S. Cir. Ct. .... 2-596

**LANIER.** U. S. Dis. Ct. .... 2-154

Sustains, by a very cogent argument, the opinion that the application of the assignee for the examination of the bankrupt need not be verified by his affidavit. In re Solis, Dayton, Register, U. S. Dis. Ct. .... 4-70

**LEACHMAN, S. B.** U. S. Dis. Ct. .... 1-391

Does not go to the extent of allowing the examination to be suspended that the bankrupt may consult his counsel privately. In re Collins, Ballard, J., U. S. Dis. Ct. .... 1-554

**LITTLE, WM. H.** U. S. Dis. Ct. .... 1-341  
 Doubted In re Abbe, Johnson, Register, U. S. Dis. Ct. .... 2-76

Examined and compared, Field, J., same case .... 2-79

**LOWENSTEIN ET AL.** U. S. Dis. Court. .... 3-269

Approved In re Comstock et al., Longyear, J., U. S. Dis. Ct. .... 9-89

**MALLORY, E.** U. S. Dis. Ct. .... 6-22  
 Affirmed, Field, J., U. S. Cir. Ct. .... 6-32

**MARKSON & SPAULDING, ETC. V. HEANEY.** U. S. Cir. Ct. .... 4-511

Approved in Lamb v. Damron, Nelson, J., U. S. Cir. Ct. .... 7-511

**MARSHALL V. KNOX ET AL., ETC.** U. S. Supreme Ct. .... 8-97

The spirit of the decision is certainly hostile to the idea that judgments of

this Court establishing rights against all parties in being, who may, or can be brought in, are to be overthrown or affected by the appointment of assignees in bankruptcy after execution of such judgment. Lenihan v. Haman, Davis, J., N. Y. Supreme Ct. .... 8-558

Examined in Sutherland et al. v. Lake Superior Ship Canal, Railroad & Iron Co., Emerson, J., U. S. Cir. Ct. .... 9-311

**MARTIN, ETC., V. TOOF, PHILLIPS & CO.** U. S. Dis. Ct. .... 4-488

Affirmed, U. S. Supreme Ct. .... 6-49

**MASTERSON.** U. S. Dis. Ct. .... 4-553

Reconsidered, and rulings retracted so far as in conflict with those In re Evans, Lowell's Dec. 526.

Ferguson, &c., v. Peckham et al., Knowles, J., U. S. Dis. Ct. .... 6-570, 572

**MCLEAN ET AL. V. BROWN, WEBER & CO.** U. S. Dis. Ct. .... 4-585

Approved, In re Hercules Mut. Life Ass. So., Blatchford, J., U. S. Dis. Ct. .... 6-349

**MONTGOMERY, H. B.** U. S. Dis. Court. .... 3-374

Examined and disapproved In re Scott & McCarty, Clarke, Register. .... 4-419

Impliedly approved, same case, Longyear, J., U. S. Dis. Ct. .... 4-426

**MOORE.** U. S. Dis. Ct. .... 1-470

Not fully indorsed In re Skelly, Blodgett, J., U. S. Dis. Ct. .... 5-216

**MORFORD, C. A.** U. S. Dis. Ct. .... 1-211

Settles the practice as to allowing of amendments by Register, In re Heller. .... 5-49

**MUNGER & CHAMPLIN.** U. S. Dis. Court. .... 4-295

Reversed, Curran et al. v. Munger et al., U. S. Cir. Ct. .... 6-33

**MYERS, LOUIS.** U. S. Dis. Ct. .... 1-581

Approved, In re Rainsford, Husbands, Referee, U. S. Dis. Ct. .... 5-389

**NEAL, J. C.** U. S. Cir. Ct. .... 2-241

Approved, In re Norris, Longyear, J., U. S. Dis. Ct. .... 4-37

**NOAKES, T.** U. S. Dis. Ct. .... 1-592

Disapproved, as to the remedy of a party who claims as his own property in the possession of an assignee in bankruptcy. In re Vogel, Blatchford, J., U. S. Dis. Ct. .... 2-434



**PATTERSON, C. G.** U. S. Dis. Ct.....1-125

Understood to hold that the words "time of adjudication" and "time of the bankruptcy," as expressed in Sec. 19, must be construed in connection with the explanatory language in the 32d Section, and to be equivalent to the commencement of proceedings at the time of filing the petition. In re Nounnan & Co., Hawley, J., U. S. Supreme Court, Utah Territory.....7-23

**RAY, J. T.** U. S. Dis. Ct.....1-203

Disapproved, In re Harden, Fox, J., U. S. Dis. Ct.....1-395

**RICHARDSON, H. A. & J. B.** U. S. Dis. Ct. 2-202

Approved in Markson & Spaulding, &c., v. Heaney, Dillon, J., U. S. Cir. Ct. 4-520

Examined and discriminated, Goodall v. Tuttle, Hopkins, J., U. S. Dis. Court. 7-209

**ROSENBERG, MYRON.** U. S. Dis. Ct..2-236

The construction of Sec. 21 approved, In re Ghirardelli, Hoffman, J., U. S. Dis. Ct.....4-167

**SAMPSON V. BURTON ET AL.** U. S. Dis. Ct. 5-459

Affirmed, Sampson v. Clark & Burton, U. S. Cir. Ct.....6-403

**SCAMMON.** U. S. Dis. Ct.....10-67

Must be understood as referring to the facts under consideration, and not covering cases where an adjudication and appointment of assignee had been made. In re Raffauf, Hopkins, J., U. S. Dis. Ct. 10-72

**SCAMMON V. COLE ET AL.** U. S. Dis. Ct. 8-393

Affirmed, U. S. Cir. Ct.....5-257

**SECOND NATIONAL BANK OF LEAVENWORTH ET AL. V. HUNT, ETC.** U. S. Supreme Court.....4-616

Shows, upon examination, that the ground of the decision is, that the mortgage was not valid by the laws of Kansas, and was fraudulent against creditors. In re Dow, Shepley, J., U. S. Cir. Ct.....6-14

**SEDGWICK V. MENCK & BOSTWICK.** U. S. Dis. Ct.....1-425

Reversed, U. S. Cir. Ct.....1-675

**SEDGWICK V. MENCK & BOSTWICK.** U. S. Cir. Ct.....1-675

Approved, In re Davis, Hoffman, J., U. S. Dis. Ct.....4-722

**SEDGWICK V. PLACE ET AL.** U. S. Dis. Ct. 3-189

Disapproved, U. S. Cir. Ct.....1-673

**SEDGWICK, ETC., V. PLACE ET AL.** U. S. Cir. Ct.....1-673

It does not clearly appear, from the report of the cases, but the fact seems to be that the respondents were not acting under the insolvent laws of New York, but under another act, regulating private trusts created by the act of parties for the benefit of creditors. In re Hawkins et al., Carpenter, J., Supreme Court of Errors, Conn.....2-381

**SEDGWICK V. PLACE.** U. S. Dis. Court. 5-168

Modified, U. S. Cir. Ct.....10-28

**SEYMOUR, J. W.** U. S. Dis. Ct.....1-29

My views, as therein stated, are confirmed in Duguid v. Edwards. Supreme Court, N. Y., 50 Barb., 288. In re Kimball, Blatchford, J., U. S. Dis. Court. 2-208

Reconsidered and overruled, In re Rosenberg, Blatchford, J., U. S. Dis. Ct. 2-240

**SHEPPARD, LUTHER.** U. S. Dis. Ct..1-439

Decision goes upon the ground that a party cannot be bound by proceedings of which he had no notice. In re Boutelle, Clarke, J., U. S. Dis. Ct. ....2-132

**SHERMAN ET AL. V. BINGHAM ET AL.** U. S. Dis. Ct.....5-34

Disapproved in Goodall v. Tuttle, Hopkins, J., U. S. Dis. Ct.....7-210

Reversed. U. S. Cir. Ct.....7-490

**SHOWER, J. L.** U. S. Dis. Ct.....6-586

Disapproved In re Pierson, Bradford, J., U. S. Dis. Ct.....10-194

**SMITH V. BUCHANAN.** U. S. Cir. Court. 4-397

Affirmed, Buchanan v. Smith, U. S. Supreme Ct.....7-513

**SMITH V. KEHR ET AL.** U. S. Cir. Court. 7-97

Affirmed, Kehr et al. v. Smith, U. S. Supreme Ct.....10-49

**SMITH V. MASON, ETC.** U. S. Sup. Ct..6-1

Determines only that the District Court, in the exercise of the summary

- jurisdiction conferred by the first section of the act, cannot proceed, on the petition of an assignee in bankruptcy, to determine the right, as between the assignee and another person, of property in a fund, when both claim absolute title; and that to divest the other of possession, the assignee must bring formal suit under the second section of the act. *In re Ulrich et al.*, Blatchford, J., U. S. Dis. Ct. .... 8-23
- SOLOMON. U. S. Dis. Ct. .... 2-285  
Approved as to the importance of keeping a cash account. *In re Gay, Fox, J.*, U. S. Dis. Ct. .... 2-370
- STUBBS. U. S. Dis. Ct. .... 4-376  
Regarded as applicable, in *Gardner, &c., v. Cook, &c.*, Knowles, J., U. S. Dis. Ct. .... 7-350
- SUTHERLAND. U. S. Dis. Ct. .... 1-531  
Concedes the power of the bankruptcy court to make rules requiring the answer to be verified. *In re Findlay, Hopkins, J.*, U. S. Dis. Ct. .... 9-86
- SWEATT, ETC., *V. THE BOSTON, HARTFORD & ERIE R. R. CO. ET AL.* U. S. Cir. Ct. 5-234  
Approved *In re Southern Minnesota R. R. Co.*, Nelson, J., U. S. Dis. Court. 10-86
- TALBOT. U. S. Dis. Ct. .... 2-280  
Construction of General Order No. 12 disapproved. *In re Donahue & Page, Longyear, J.*, U. S. Dis. Ct. .... 8-453
- TALLMAN, DARIUS. U. S. Dis. Ct. .... 1-462  
Approved *In re Rosenfield, Field, J.*, U. S. Dis. Ct. .... 1-576
- TANNER, E. P. U. S. Dis. Ct. .... 1-316  
Approved *In re Judson, Blatchford, J.*, U. S. Dis. Ct. .... 1-369
- THE LADY BRYAN MINING CO.  
See "Lady Bryan Mining Co."
- THE SECOND NATIONAL BANK OF LEAVENWORTH *V. HUNT.*  
See "Second Nat. Bank of Leavenworth et al. *v. Hunt.*"
- THORNHILL ET AL. *V. BANK OF LOUISIANA.* U. S. Dis. Ct. .... 3-435  
Affirmed U. S. Cir. Ct. .... 5-367
- THORNHILL ET AL. *V. BANK OF LOUISIANA.* U. S. Cir. Ct. .... 5-367  
Approved *In re Independent Ins. Co.*, Shepley, J., U. S. Cir. Ct. .... 6-271
- THORNTON. U. S. Dis. Ct. .... 2-189  
The including of money under the head of "necessaries," approved *In re Hay et al.*, Lowell, J., U. S. Dis. Ct. .... 7-344
- VOGEL, H. U. S. Dis. Ct. .... 2-427  
Affirmed, U. S. Cir. Ct. .... 8-198  
Approved, *In re Steadman, Erskine, J.*, U. S. Dis. Ct. .... 8-330
- WALLACE. U. S. Dis. Ct. .... 2-134  
Approved, *In re Ulrich et al.*, Blatchford, J., U. S. Dis. Ct. .... 8-21
- WARREN & ROWE *V. TENTH NATIONAL BANK.* U. S. Dis. Ct. .... 5-479  
Reversed. *Warren v. Tenth National Bank.* U. S. Cir. Ct. .... 7-481
- WEBB & TAYLOR. U. S. Dis. Ct. .... 3-720  
Overruled. *In re Kahley et al.*, Hopkins, J., U. S. Dis. Ct. .... 6-189
- WHITE. U. S. Dis. Ct. .... 2-590  
Approved, *In re Jorey & Sons*, U. S. Dis. Ct. .... 2-670
- WILLIAMS. U. S. Dis. Ct. .... 2-229  
Sustained by the authorities cited. *In re Mansfield, Durell, J.*, U. S. Dis. Ct. 6-393  
Appears to consider that the question whether a debt is provable depends upon the question whether it existed at the time of the adjudication of bankruptcy. *In re Hennocksburgh & Block, Hall, J.*, U. S. Dis. Ct. .... 7-48
- WILLIAMS ET AL. *V. THE BANK OF LOUISIANA.* U. S. Dis. Ct. .... 3-435  
Affirmed, Woods, J., U. S. Cir. Ct. 5-367
- WILSON *V. CITY BANK OF ST. PAUL.* U. S. Cir. Ct. .... 5-270  
Reversed, U. S. Supreme Ct. .... 9-97
- WILSON *V. CITY BANK OF ST. PAUL.* U. S. Supreme Ct. .... 9-97  
Reconciled with *Buchanan v. Smith, Partridge v. Dearborn et al.*, Lowell, J., U. S. Dis. Ct. .... 9-475
- WRIGHT, J. S. U. S. Dis. Ct. .... 2-142  
Overruled, *In re Lord, Nixon, J.*, U. S. Dis. Ct. .... 5-329
- WYNNE, C. W. U. S. Cir. Ct. .... 4-23  
Examined *In re Butler, Harper, Register*, U. Dis. Ct. .... 6-505  
Settled law as to the effect of a mortgage or other conveyance made as security for a debt. *In re Jordan, Longyear, J.*, U. S. Dis. Ct. .... 9-417

# THE BANKRUPT ACT, 1867.

BELOW will be found the cases in the ten volumes where are cited and construed the sections and General Orders of the Bankrupt Act, as passed in 1867, with the Amendments to June 22, 1874, on which day the Revised Statutes of the United States were adopted. This Table has been prepared to eliminate any errors that may have crept into the citations of the cases under the Sections of the Bankrupt Act, as it now stands. The decisions of the Judges referred specifically to the sections under their old numbers, and the profession are generally familiar with the Act by the old numeration of the sections.

SECTION 1.		PAGE
Hasbrouck.....	1-77	
Campbell.....	1-169	
Stewart.....	1-279	
Glaser.....	1-337, 340	
Barrow, &c.....	1-483	
Jones v. Leach.....	1-597	
Bowie.....	1-630	
Salmons.....	2-56	
Jones.....	2-60	
Wallace.....	2-135	
Richardson et al.....	2-203	
Bill v. Beckworth et al.....	2-242	
Foster et al. v. Ames et al.....	2-458	
Hunt.....	2-543, 545	
Alexander.....	3-81, 82	
N. Y. Kerosene Oil Co.....	3-126	
Ulrich et al.....	3-135	
Avery v. Johann.....	3-145	
Mebane.....	3-349	
Montgomery.....	3-425	
Day v. Bardwell et al.....	3-457, 460, 462	
Bininger et al.....	3-484	
Snedaker.....	3-631, 637	
Norris.....	4-36	
Kahley et al.....	4-383	
Leighton v. Kelsey et al.....	4-472	
York & Hoover.....	4-484	
Markson & Spaulding, &c., v. Heaney.	4-515, 520	
Shaffer v. Pritchery & Thomas.....	4-550	
Haskell.....	4-559	
Way v. Howe.....	4-678	
Sherman et al. v. Bingham et al.....	5-36	
Knight v. Cheney.....	5-305	
Smith v. Mason.....	6-7	
Mallory.....	6-24, 29, 31	
Alabama & Chattanooga R. R. Co.....	6-111	
Jobbins v. Montgomery et al.....	6-123, 124	
Lady Bryan Mining Co.....	6-254	
Sampson v. Burton et al.....	6-407, 408	
Jobbins v. Montague et al.....	6-515	
Paine v. Caldwell.....	6-558, 562	
Nounnan & Co.....	7-19	
Alabama & Chattanooga R. R. Co. v.		
Jones.....	7-171	
Goodall v. Tuttle.....	7-195, 201, 213	
Brinkman.....	7-427	
Shearman v. Bingham et al.....	7-490, 493,	
	500	
Lamb v. Damron.....	7-510, 511	
Ulrich et al.....	8-17, 20, 22	
Casey.....	8-74	
Voorhees v. Frisbee.....	8-153	
Gilbert v. Priest.....	8-164	
Payson v. Dietz.....	8-195	
Hutchings et al. v. Muzzy Iron Works.		
	8-461	
Cook v. Waters et al.....	9-159	
Leland et al.....	9-217	
SECTION 2.		PAGE
O'Brien.....	1-176	
Irving v. Hughes.....	2-62	
Bill v. Beckworth.....	2-242	



	PAGE
Rosenberg.....	3-75
Crawford .....	3-699
Hardy, Blake & Co. v. Bininger & Co.....	4-268
Haskell.....	4-562
Davis.....	4-720
Boyd.....	5-199
Clark & Bininger.. ..	6-202
Stuyvesant Bank.....	6-275
Ferguson et ux. v. Peckham et al.....	6-571
Gilbert v. Priest.....	8-163
Jaycox & Green.....	8-241

SECTION 7.

	PAGE
Earle.....	3-304
Woolford.....	3-445
Woodward et al.....	3-719

SECTION 8.

	PAGE
O'Brien.....	1-177
Frear.....	1-664
Irving v. Hughes.....	2-62
Coleman.....	2-672, 674
Alexander.....	3-30, 31
Kyler.....	3-47
Ruddick v. Billings.....	3-62
Bininger et al.....	3-484
Bonesteel.....	3-517
Catlin, &c., v. Foster.....	3-549, 550
Estate of Elder .....	3-683
Benjamin, &c., v. Hart.....	4-408, 409
York & Hoover .....	4-483, 484
Place & Sparkman.....	4-542
Peiper v. Harmer.....	5-252
Scammon v. Cole et al.....	5-257
Samson v. Blake et al.....	6-402
Goodall v. Tuttle.....	7-201, 202
Gilbert v. Priest.....	8-163
Meade v. Thompson.....	8-529
Coit v. Robinson et al.....	9-294, 295

SECTION 9.

	PAGE
Morgan et al. v. Thornhill et al.....	5-10
Meade v. Thompson.....	8-529

SECTION 10.

	PAGE
Bellamy.....	1-113
Ruth.....	1-156

	PAGE
Morford.....	1-212
Dean.....	1-255
Walker.....	1-336
Glaser.....	1-339
Boutelle.....	2-132
Hunt.....	2-545
Martin v. Berry.....	2-638
Coleman.....	2-672
Raynor .....	7-535
Donahue et al.....	8-453
Rogers.....	10-446

SECTION 11.

	PAGE
Robinson.....	1-8
Hill.....	1-19, 20
Pulver .....	1-49, 50, 51
Hasbrouck.....	1-75, 76
Patterson.....	1-181, 182
Robinson.....	1-290
Walker.....	1-335
Judson.....	1-369
Miller.....	1-412
Winn.....	1-502
Phelps, Caldwell & Co.....	1-529
Gettleston.....	1-611
Frear.....	1-664
Fowler.....	1-681
Boutelle.....	2-132
Sidle.....	2-222
Griffin.....	2-255
Little.....	2-296
Vogel.....	2-431
Goldschmitt.....	3-166, 167
Nicodemus.....	3-231, 232
Foster & Pratt.....	3-238, 239
Hardy et al. v. Clark & Bininger....	3-387, 388
Young et al.....	3-441
Goodwin v. Sharkey.....	3-559
Snedaker... ..	3-631
Maxwell et al. v. Foxton et al.....	4-211
Fogerty & Gerrity.....	4-451
Markson & Spaulding v. Heany....	4-517
Wright v. Johnson.....	4-628
Penn et al.....	5-32, 33, 34
Warren Leland et al.....	5-227
Alabama and Chattanooga R. R. Co.	6-110, 113
Davis v. Anderson et al.....	6-152
U. S. v. Pusey.....	6-291
Symonds v. Barnes.....	6-377
Stuart v. Hines et al.....	6-423, 424

	PAGE
Goodall v. Tuttle.....	7-212
Holleman v. Deewy, &c.....	7-269
Merrick.....	7-461
Hudson v. Bingham.....	8-497
Dole.....	9-198
Howes & Macy.....	9-427, 428, 429
Litchfield.....	9-506
Fees for Registering.....	10-148
Piper v. Baldy.....	10-528

## SECTION 12.

	PAGE
Hill.....	1-16
Pulver.....	1-52, 53, 55
Clark.....	1-190
Ratcliffe.....	1-400, 401
Miller.....	1-412
Phelps, Caldwell & Co.....	1-526
Hall.....	2-194
Talbot.....	2-281
O'Farrell.....	2-485
Schepeler et al.....	3-171
Goodfellow.....	3-454
Gunike.....	4-23
Haake.....	7-66
Frazier & Fry v. McDonald.....	8-238
Howes & Macy.....	9-426
Litchfield.....	9-506, 507
Raffauf.....	10-70
Angell.....	10-74
Allen v. Ward.....	10-287

## SECTION 13.

	PAGE
Hill.....	1-16
Pulver.....	1-53
Cogswell.....	1-62, 63
Purvis.....	1-165
Dean.....	1-255
Miller.....	1-412
Seckendorf.....	1-626
Frear.....	1-665
Jones.....	2-60
Scheiffer & Garrett.....	2-592
Goodwin.....	3-417
Kington.....	3-448
Bromley & Co.....	3-690
Bloss.....	4-149
Stuyvesant Bank.....	6-276
Stillwell.....	7-227, 229
Lake Superior Ship Canal, R. R., and Iron Co.....	7-387

	PAGE
Woods et al. v. Buckewell et al.....	7-406
Bininger & Clark.....	9-568, 569, 570
Joliet Iron and Steel Co.....	10-65
Fees for Registering.....	10-148
Obear, Thomas.....	10-155

## SECTION 14.

	PAGE
Macintire.....	1-14
Patterson.....	1-128, 133, 134
Ruth.....	1-156
Campbell.....	1-168, 170
Stewart.....	1-279
Rosenfield, Jr.....	1-321
McClellan.....	1-389
Corner v. Miller et al.....	1-404
Cobb.....	1-414, 415, 418
Hill.....	1-483
Winn.....	1-502
Bradshaw v. Klein et al.....	1-543
Pennington v. Lowenstein et al.....	1-570
Meyers.....	1-584, 585
Smith et al.....	1-600
Shields.....	1-608
Bowie.....	1-631
Arledge.....	1-645
Frear.....	1-665
Dunham & Orr.....	2-19
Purcell & Robinson.....	2-24
Salmons.....	2-57
Houseberger & Zibelin.....	2-93
Farish.....	2-168
Mead v. The National Bank.....	2-176
Bennett, Erben.....	2-181
Perdue.....	2-184
Thornton.....	2-189
Crockett et al.....	2-209
Griffin.....	2-255
Davis et al.....	2-393
Foster v. Hackley & Sons.....	2-411
Lambert.....	2-426
Vogel.....	2-431
Hussman.....	2-441
Foster et al. v. Ames et al.....	2-463
Soldiers' Business Messenger and Dis- patch Co.....	2-519
Hunt.....	2-545
Henkel.....	2-547
McLane.....	2-567
Young.....	2-667
Wallace v. Conrad.....	3-42, 43
Littlefield.....	3-57
Feely.....	3-67, 69

	PAGE		PAGE
Neale.....	3-177, 181, 182	Lake.....	6-543
High & Hubbard.....	3-195	Edmonson v. Hyde.....	7-5
Vogel.....	3-199	Nounnan & Co.....	7-22
A. B.....	3-245	Hennocksburgh & Blook.....	7-39, 41
Brown.....	3-254	Ellerhorst et al.....	7-52
Day.....	3-306	Cox v. Wilder et al.....	7-243, 244, 245
Day v. Bardwell et al.....	3-457, 463	Hay et al.....	7-344
Joslyn et al.....	3-476, 478	Gardner v. Cook, &c.....	7-348
Clark & Bininger.....	3-494, 495	Massey et al. v. Allen.....	7-404
Gregg.....	3-531	Lamb v. Damron.....	7-509
Goodwin v. Sharkey.....	3-560	Raynor.....	7-533
Snedaker.....	3-637	Kingsley.....	7-558
Bates v. Tappan.....	3-648, 649	Owen & Murrin.....	8-9
Crawford.....	3-700	Marshall v. Knox et al.....	8-103
Griffiths.....	3-784	Gilbert v. Priest.....	8-165
Samson v. Burton et al.....	4-9, 16	Kean et al.....	8-373
Bowman v. Harding.....	4-21, 22	O'Dowd.....	8-451
Wynne.....	4-27	Johnson v. Bishop.....	8-533
Rupp.....	4-96, 97	Lenihan v. Haman.....	8-558
Janeway.....	4-101	Dillard.....	9-14
Hoyt et al. v. Freel et al.....	4-141, 143	Miller v. O'Brien.....	9-26
Snedaker.....	4-174	Grinnell & Co.....	9-33
Bean v. Brookmire & Rankin.....	4-208	Stoddard v. Locke et al.....	9-72
Beckerkord.....	4-205	Everitt.....	9-95
Mays v. Manufacturers' National Bank, Phil.....	4-447, 450	Opinion of Attorney-General.....	9-117
Laighton v. Kelsey et al.....	4-473, 474, 475	Cook v. Waters et al.....	9-158
Eldridge.....	4-499	Dole.....	9-198
Markson & Spaulding v. Heany.....	4-516, 517	Parks et al.....	9-271
Darby's Trustees v. Boatman's Sav- ings Institution.....	4-604, 607	Freeland & Gerson v. Holloman et al.....	9-333
Angier.....	4-619	Blodgett & Sanford.....	10-145
Mays et al., &c., v. Manufacturers' National Bank of Phil.....	4-663, 666	Holyoke v. Adams.....	10-271, 272
Davis.....	4-721	Morris et al. v. Swartz.....	10-306
Zantzinger v. Ribble, &c.....	4-728	Maxwell v. McCune et al.....	10-307, 309
Harvey v. Crane.....	5-220	Sutherland v. Davis.....	10-426
Warren Leland.....	5-228	Allen & Co. v. Montgomery et al.....	10-510
Hester.....	5-267	Miller v. Bowles et al., and Appleton v. Stevers.....	10-516
Rainsford.....	5-339	Kent & Co. v. Downing.....	10-539
Maltbie v. Hotchkiss.....	5-469	Lumpkin et al. v. Eason.....	10-552
Hunt.....	5-493	Smith, &c., v. Ely.....	10-564, 565
Dow.....	6-13		
Bingham v. Richmond & Gibbs.....	6-127		
Bingham v. Frost and Bingham v. Williams.....	6-180, 181		
Pratt v. Curtis et al.....	6-141		
Rogers v. Winsor.....	6-251		
Lady Bryan Mining Co.....	6-254		
Stuart v. Hines et al.....	6-420		
Platt v. Archer.....	6-465, 466, 467, 468, 471, 472, 490, 495		

## SECTION 15.

	PAGE
White & May.....	1-218
McClellan.....	1-389
Davis et al.....	2-393
Vogel.....	2-482
A. B.....	3-245
Snedaker.....	3-632, 637
Markson & Spaulding v. Heaney.....	4-517
Davis v. Anderson et al.....	6-151



## SECTION 16.

	PAGE
Hunt.....	2-545
Clark & Bininger.....	3-495
Snedaker.....	3-632, 637
Samson, &c., v. Burton et al.....	4-10
May v. Man. Nat. Bank of Phil....	4-449
May et al., &c., v. Man. Nat. Bank of Phil.....	4-665
Zantzinger v. Ribble, &c.....	4-728
Davis v. Anderson et al.....	6-151
Stuart v. Hines et al.....	6-422
Jones.....	7-507
Gilbert v. Priest.....	8-165

## SECTION 17.

	PAGE
Hughes.....	1-230, 231
Graves.....	1-238, 239
Dean.....	1-263
Stewart.....	1-279
Davis et al.....	2-393
Davis v. Anderson et al.....	6-151
Noyes.....	6-280
Jones.....	9-492
Kington.....	4-449

## SECTION 18.

	PAGE
Miller.....	1-412
Powell.....	2-47
Boutelle.....	2-180
Bridgman.....	2-258
Barrett.....	2-535
Scheiffer & Garrett.....	2-593, 594
Kington.....	3-449, 451
Mallory.....	4-158
Richter's Estate.....	4-224, 226
Blaisdell et al.....	6-82
Bininger & Clark.....	9-569
Fees for Registering.....	10-142

## SECTION 19.

	PAGE
Orne.....	1-59
Patterson.....	1-134
Ray.....	1-207, 211
Rosenfield, Jr.....	1-321
Winn.....	1-503
Frear.....	1-662
Devoe.....	2-28
Rundle & Jones.....	2-114
Sidle.....	2-222

## PAGE

Davis et al.....	2-394
High & Hubbard.....	3-192, 193, 194
Sigsby v. Willis.....	3-312
Nicodemus.....	3-231
Sntherland.....	3-315
Muller & Brentan.....	3-337
Joslyn et al.....	3-475
Catlin v. Foster.....	3-547
Cuimette.....	3-575
Brown.....	3-584, 586
Crawford.....	3-699, 701
Downing.....	3-753
Linn et al. v. Smith.....	4-47
Alexander et al.....	4-179
Scott & McCarty.....	4-423
Markson & Spaulding v. Heaney ..	4-517
Preston.....	5-296
City Bank of Savings, Loan & Dis- count.....	6-73
Preston.....	6-548
Nounnan.....	7-22
Ten Eyck & Choate.....	7-30
Hennocksburgh & Block.....	7-39
Haake.....	7-63
Newland.....	7-479
Town et al.....	8-40
Riggs, Lechtenberg & Co.....	8-91
Robinson v. Peasant.....	8-428
Jones & Cullum v. Knox.....	8-560
Osage Valley & S. Kan. R. R. Co....	9-283
May & Merwin.....	9-420, 421
Talcott & Souther.....	9-504
Clancy.....	10-217
Halliburton v. Carter.....	10-361
Perkins et al.....	10-534

## SECTION 20.

## PAGE

Orne.....	1-62
Campbell.....	1-168
Stewart.....	1-279
Bridgman.....	1-313, 314
Sheppard.....	1-455
Stewart v. Isidor et al.....	1-489
Winn.....	1-501, 503
Cram.....	1-505
Meyers.....	1-585
Jones v. Leach et al.....	1-597
Smith et al.....	1-600
Bowie.....	1-631
Dunham & Orr.....	2-19
Salmons.....	2-57
Van Tuyl.....	2-72

	PAGE		PAGE
Davis et al.....	2-394	Stewart v. Isidor et al.....	1-489
Hambright.....	2-508	Winn.....	1-502
Wallace v. Conrad.....	3-43, 44, 45	Cram.....	1-508
Columbian Works.....	3-75	Meyers.....	1-583
Murdock.....	3-147	Devoe.....	2-28
High & Hubbard.....	3-192, 193, 194	Rundele & Jones.....	2-114
Brand.....	3-325, 326	Wright.....	2-150
Montgomery.....	3-427, 428	Richardson et al.....	2-203
Catlin v. Foster.....	3-544	Rosenberg.....	2-288
Snedaker.....	3-633, 637	.....	2-341
Bloss.....	4-149	Bodenheim & Adler.....	2-422
Alexander.....	4-179	Migel.....	2-482, 484
Loder.....	4-192, 193	Marks.....	2-576
Hardy, Blake & Co. v. Bininger & Co.	4-268	Wallace v. Conrad.....	3-44, 45
Kahley et al.....	4-333	Brown.....	3-586
Markson & Spaulding, &c., v. Heany.	4-516, 517	World Co. v. Brooks.....	3-589
Haskill.....	4-560	Snedaker.....	3-633, 637
Iron Mountain Co. of Lake Champlain.	4-646	Bates v. Tappan.....	3-648, 649
Drake v. Rollo, &c.....	4-689, 690	Bromley & Co.....	3-688
Hitchcock v. Rollo, &c.....	4-695, 702, 703, 704, 705	Crawford.....	3-701
Blanding.....	5-42	Samson v. Burton et al.....	4-10, 14
Mallory.....	6-29	Hoyt et al. v. Freel et al....	4-133, 140, 143
City Bank of Savings, Loan & Dis-		Bloss.....	4-150
count.....	6-73	Ghirardelli.....	4-164, 167
Davis v. Anderson et al....	6-150, 151, 152	Odell v. Wootten.....	4-185
Lady Bryan Mining Co.....	6-254	Maxwell et al. v. Faxton et al...	4-210, 211
Stuyvesant Bank.....	6-274	Leighton v. Kelsey et al.....	4-473, 474
Mansfield.....	6-391, 392, 393	Cory et al. v. Ripley.....	4-504
Preston.....	6-548	Allen, &c., v. Soldiers' Bus. Mess. &	
Ten Eyck & Choate.....	7-30	Dis. Co.....	4-587
Hennocksburgh & Block.....	7-41	Way v. How.....	4-679
Ellerhorst et al.....	7-52	Wilson v. Capuro et al.....	4-714
Stillwell.....	7-228, 229	Davis.....	4-722
Jaycox & Green.....	7-305	Gallison et al.....	5-356
Hanna.....	7-504	Davis v. Anderson et al.....	6-152, 153
Jaycox & Green.....	8-265	Beldon.....	6-447, 448
Stoddard v. Locke et al.....	9-72	Myer v. Aurora Ins. Co.....	7-191
Sawyer et al. v. Hoag et al.....	9-150	Emery et al. v. Canal Nat. Bank....	7-224
Hovey et al. v. Home Ins. Co.....	10-230	Merrick.....	7-467
Maxwell v. McCune et al.....	10-308	Ulrich et al.....	8-17, 18, 19
		Davis.....	8-174
		Hudson v. Bingham.....	8-503
		Dingee v. Becker.....	9-508, 511, 513
		Ansonia Brass & Copper Co. v. The	
		New Lamp Chimney Co....	10-355, 358, 359
		Perkins et al.....	10-580

## SECTION 21.

	PAGE
Reed.....	1-1
ymour.....	1-29
etcalf & Duncan.....	1-202
atterson.....	1-308
vy et al.....	1-328
eppard.....	1-447, 456

## SECTION 22.

	PAGE
Orne.....	1-61
Bellamy.....	1-66
Knoepfel.....	1-73



	PAGE
Holland.....	8-191
Leland et al.....	9-212, 214
Bartusch.....	9-479
Clark & Daughtry.....	10-26
Christley.....	10-209

## SECTION 24.

	PAGE
O'Brien.....	1-177
Levy et al.....	1-328
Harden.....	1-395, 396
Hyman.....	2-383
Emison.....	2-596
Phelps v. Clasen.....	3-88
O'Donohoe.....	3-247
Bininger et al. ....	3-484
Catlin v. Foster.....	3-549, 550
Estate of Elder .....	3-683
Maxwell et al. v. Faxton et al.....	4-211
Place & Sparkman.....	4-542
Morgan et al. v. Thornhill et al.....	5-6
Blandin.....	5-42
Cornwall.....	6-329
Hannockburgh & Block.....	7-41
Adams v. Meyers .....	8-215

## SECTION 25.

	PAGE
Graves.....	1-238
Jones & Leach et al.....	1-597
Bill v. Beckwith et al.....	2-246
Vogel.....	2-438
Foster et al. v. Ames et al.....	2-464
Hambright.....	2-504
Hunt.....	2-543
Fuller.....	4-117
Markson & Spaulding v. Heany.....	4-516, 517
Knight v. Cheney.....	5-311
Mallory.....	6-29
Davis v. Anderson et al.....	6-151
Ferguson et ux. v. Peckham et al....	6-571
Haake.....	7-64

## SECTION 26.

	PAGE
Baum.....	1-5
Macintire.....	1-13
Seymour.....	1-31
Bellamy.....	1-69
Patterson.....	1-101, 104

	PAGE
Levy et al.....	1-105, 108, 110
Patterson.....	1-131
Levy et al.....	1-138, 139
Patterson.....	1-149, 150, 153, 163
Selig.....	1-188
Kimball.....	1-194, 196
Ray .....	1-203, 205, 206, 207
Morford.....	1-212
Perry.....	1-222
Hughes .....	1-230, 231
Isidor & Blumenthal.....	1-264
Fredenberg.....	1-269
O'Kell.....	1-303
Patterson.....	1-308
Tanner.....	1-316
Walker.....	1-318
Glaser.....	1-338, 339, 340
Little.....	1-344
Sherwood.....	1-352
Judson.....	1-364, 367, 368
Griffen .....	1-371
Leachman.....	1-392
Collins.....	1-552
Blake.....	2-11
Hazleton.....	2-32
Pettis.....	2-45
Adams.....	2-95
Lanier.....	2-154
McBrien.....	2-199
Kimball.....	2-206
Rosenberg.....	2-141
Adams .....	2-273
Robinson.....	2-343
Brandt.....	2-345
Kimball.....	2-354
Watts.....	2-448
Migel.....	2-483
Van Tuyl.....	2-581
Kyler.....	2-651
Bellis & Milligan.....	3-203, 271, 272
A. B.....	3-245
Woolford.....	3-445
Clark & Bininger.....	3-495
Bromley & Co.....	3-687, 688, 689, 694
Whitehouse.....	4-63
Solis.....	4-72
Ghirardelli.....	4-165, 166
Belden v. Hooker.....	4-195, 196
Clark et al.....	4-237
Zinn et al.....	4-438
Heller.....	5-48
Frizelle. ....	5-121
Vogel.....	5-396
Jones.....	6-387

	PAGE
Paddock.....	6-397
Belden.....	6-447
Garrison, &c., v. Markley, &c.....	7-247
Pioneer Paper Company .....	7-250
Stuyvesant Bank.....	7-447
Grover & Baker v. Clinton.....	8-813
Salkey & Gerson.....	9-108, 109, 110
Dole.....	9-198, 197, 198, 199, 201
Jay Cooke & Co.....	10-128
Witkowski.....	10-209

SECTION 27.

	PAGE
Anonymous.....	1-219, 220
Dean.....	1-258, 256
Robinson.....	1-290, 298
Son.....	1-312
Glaser.....	1-339
Sherwood.....	1-351
Corner v. Miller et al.....	1-405
Miller.....	1-412
Byrne.....	1-465, 468
Jewett .....	1-491
Phelps, Caldwell & Co.....	1-528
Gettleston.....	1-605
Appold.....	1-624
Van Tuyl.....	1-636
Anonymous.....	2-69
Boutelle.....	2-131
Bill v. Beckwith.....	2-246
Van Tuyl.....	2-581
Bushey.....	3-685
Brown.....	3-722
Downing.....	3-753
Hardy, Blake & Co. v. Bininger & Co.....	4-268
Allen, &c., v. Soldiers' Business Mes- senger and Dispatch Co .....	4-537
Bakewell.....	4-620, 621
Davis v. Anderson et al.....	6-151
Clark & Bininger.....	6-201, 205, 206
Stuyvesant Bank.....	6-275
Nounnan & Co.....	7-19, 21
Knight.....	8-442
Dillard.....	9-15
Clark.....	9-67
Hubbel et al.....	9-523

SECTION 28.

	PAGE
Bellamy.....	1-65, 66
Anonymous.....	1-219
Hughes .....	1-230

	PAGE
Dean.....	1-256, 263
Robinson.....	1-290, 293
Bridgman.....	1-313
Sherwood.....	1-351
Phelps, Caldwell & Co.....	1-528
Gettleston.....	1-605
Bowie... ..	1-631
Heirschberg.....	1-642
Anonymous.....	2-69
Hambright.....	2-500, 504
Whitehead.....	2-601
Fortune.....	2-663
Walker v. Barton.....	3-266
Brand.....	3-326
Kington.....	3-449
Bushey.....	3-685
Hardy, Blake & Co. v. Bininger & Co.....	4-268
Comstock & Young.....	5-192, 193
Davis v. Anderson et al.....	6-151
Kahley et al .....	6-193, 195
Clark & Bininger.....	6-199, 200, 201, 205, 206
Noyes.....	6-279, 282
Nounnan & Co.....	7-21
Hope Mining Co.....	7-600
Rosey .....	8-509, 511
Stuyvesant Bank.....	9-323
McConnell.....	9-393
Sixpenny Savings Bank et al. v. Es- tate of Stuyvesant Bank.....	10-400, 402

SECTION 29.

	PAGE
Cogswell.....	1-63
Bellamy .....	1-65, 69, 99
Levy & Levy.....	1-140
Patterson... ..	1-153
Dean.....	1-257
Mawson .....	1-266, 267
Hill.....	1-276
Rathbone.....	1-295
Beardsley.....	1-305
Rathbone .....	1-325, 326
Levy & Levy.....	1-327, 328
Corner v. Miller et al.....	1-405
Hill.....	1-432
Dodge.....	1-435
Mawson.....	1-438
Sheppard.....	1-455
Woolums & Woolums.....	1-497
Rathbone.....	1-539
Bradshaw v. Klein et al.....	1-544

	PAGE
Rosenfield.....	1-576
Seckendorf.....	1-627
Wright & Peckham.....	2-42
Puffer.....	2-43
Bashford.....	2-74
Elliott.....	2-110
Rosenfield.....	2-118, 127
Boutelle.....	2-129, 181
Brodhead.....	2-279
Solomon.....	2-286
Wyatt.....	2-291
Greenfield.....	2-299
Newman.....	2-302
Greenfield.....	2-311
Machad.....	2-352
Gay.....	2-361
Locke.....	2-385
Bodenheim & Adler.....	2-420
Husman.....	2-439
Louis & Rosenham.....	2-452
Lang.....	2-481
Van Nostrand v. Barr et al.....	2-487
Hunt.....	2-543
Martin.....	2-548
Schuyler.....	2-551
Comstock v. Wheeler.....	2-562
Hollensshade.....	2-654
Jorey & Sons.....	2-669
Canaday.....	3-12
Clark.....	3-16, 17
Davis & Green v. Armstrong.....	3-36
Eidom.....	3-108
Goldschmidt.....	3-165, 166, 168, 170
Hammond v. Cooledge.....	3-274
Kingsbury et al.....	3-320, 323
Muller & Bretano.....	3-337
Graham, &c. v. Stark et al.....	3-363
Connell, Jr.....	3-443
Day v. Bardwell et al.....	3-456, 461
Scotfield et al.....	3-556
Solis.....	3-764
Perkins v. Gay.....	3-773, 774, 775
Doyle.....	3-784
Freeman.....	4-65
Gunike.....	4-93
Fuller.....	4-117
Babbett v. Walbrun & Co.....	4-126
Richster's Estate.....	4-225, 226, 230
Keefer... ..	4-389, 390
Cory et al. v. Ripley.....	4-503, 507
Bound.....	4-510
Orcutt.....	4-539
Bakewell.....	4-621

	PAGE
Way v. Howe.....	4-679, 680, 681
Burper et al. v. Sparhawk.....	4-686, 688
Smith & Bickford. ....	5-21
Alabama & Chat. R. R. Co. v. Jones..	5-105
Frizelle.....	5-120
Farrell.....	5-126, 127
Rainsford.....	5-387, 388
Warner et al.....	5-414, 415
Cretlew.....	5-425
Jones.....	6-387
Van Riper.....	6-573, 576
Hannockburgh & Block.....	7-41
Herrick.....	7-341
Jackson.....	8-425
Hudson v. Bingham.....	8-504, 506
Alston v. Robinett.....	9-74
Dole.....	9-198
Coyt v. Robinson et al.....	9-296
Seabury.....	10-93
Pierson.....	10-124

**SECTION 80.**

	PAGE
Moore.....	1-472
Boutelle.....	2-181
Clark.....	8-17
Randall & Sunderland.....	8-26
Babbitt v. Walbrun & Co.....	4-124
Hudson v. Bingham.....	8-504
Receiver Ocean Nat. Bank v. Estate of Wild.....	10-575

**SECTION 81.**

	PAGE
Bellamy.....	1-97
Mawson ..	1-278
Rathbone.....	1-295
Levy & Levy.....	1-327
Sheppard.....	1-453, 457
Gordon, McMillen & Co. v. Scott & Allen.....	2-88
Rosenberg.....	2-237
Burk.....	3-297, 300
Corey et al. v. Ripley.....	4-505
Way v. Howe.....	4-679
Morgan et al. v. Thornhill et al.....	5-8
Frizelle.....	5-120
Hudson v. Bingham.....	8-504
Dole .....	9-198
Coyt v. Robinson et al.....	9-296
Chandler ...	9-516

## SECTION 32.

	PAGE		PAGE
Bellamy.....	1-68	Perkins v. Gay.....	3-775
Orne.....	1-81	Whitehouse.....	4-63
Bellamy.....	1-99	Hoyt et al. v. Freel et al....	4-189, 140, 142
Patterson.....	1-135	Odell v. Wootten.....	4-184
Ray.....	1-209	Loder.....	4-192, 198
Anonymous.....	2-69	Seay.....	4-272, 273
Clarke.....	2-110	Leighton v. Kelsey et al.....	4-472
Side.....	2-222	Cronan v. Cotting.....	4-668
Colman.....	2-565	Way v. Howe.....	4-679, 680
Clark.....	3-17	Burper et al. v. Sparhawk.....	4-686
Pierce & Holbrook.....	3-258	Bunster.....	5-82, 83, 84, 85, 89, 92, 93
Crawford.....	3-700	Stevens.....	5-113, 115
Downing.....	3-758	Borden & Geary.....	5-129
Linn et al. v. Smith.....	4-47	Graham.....	5-155, 156
Mays v. Man. Nat. Bank of Phil....	4-449	Hood et al. v. Karper et al.....	5-361
Mays et al., &c., v. Man. Nat. Bank of		Kahley et al.....	6-189, 191
Phil.....	4-663	Van Riper.....	6-575, 577
Way v. Howe.....	4-679	Shower.....	6-586, 587, 589, 590
Bunster.....	5-87	Lincoln & Cherry.....	7-334
Leland & Leland.....	5-227	Hershman.....	7-605, 606, 608
Mallory.....	6-82	U. S. v. Throckmorton.....	8-310
Cornwall.....	6-328	Grover & Baker v. Clinton.....	8-314
Hannocksburg & Block.....	7-42	Hudson v. Bingham.....	8-505
Hudson v. Bingham.....	8-504	Jones & Cullom v. Knox.....	8-561
Halliburton v. Carter.....	10-361	Schuman v. Strausa.....	10-903

## SECTION 33.

	PAGE		PAGE
Seymour.....	1-81	Ray.....	1-209, 210
Kimball.....	1-196, 197	Rathbone.....	1-295, 326
Patterson.....	1-308, 309	Elliott.....	2-110
Glaser.....	1-389	Wallace.....	2-135
Tallman.....	1-463	Valk & Valk.....	3-279
Rosenfield.....	1-576	Burk.....	3-300
Devoe.....	2-28	Sutherland.....	3-316
Wright & Peckham.....	2-42	Penn et al.....	3-538
Pettis.....	2-45	Bates v. Tappan.....	3-648, 649
Anonymous.....	2-69	Downing.....	3-753
Abbe.....	2-78	Perkins v. Gay.....	3-772, 773, 774, 776
Rundle & Jones.....	2-114	Leighton v. Kelsey et al....	4-472, 473, 474
Boutelle.....	2-131	Cory et al. v. Ripley.....	4-504, 505
Wright.....	2-147	Way v. Howe.....	4-681
Kimball.....	2-206	Hunt et al. v. Taylor et al.....	4-684
Rosenberg.....	2-237, 238	Burper et al. v. Sparhawk.....	4-685, 686, 688
Migel.....	2-482	Curran et al. v. Munger et al.....	6-84
Van Nostrand v. Barr et al.....	2-487	Cornwall.....	6-328
Billing.....	2-512, 513		
Martin.....	2-549		
Valk & Valk.....	3-279		
Freidrich.....	3-465, 466		
Webb & Taylor.....	3-720		
Downing.....	3-753		

## SECTION 34.

	PAGE
Ray.....	1-209, 210
Rathbone.....	1-295, 326
Elliott.....	2-110
Wallace.....	2-135
Valk & Valk.....	3-279
Burk.....	3-300
Sutherland.....	3-316
Penn et al.....	3-538
Bates v. Tappan.....	3-648, 649
Downing.....	3-753
Perkins v. Gay.....	3-772, 773, 774, 776
Leighton v. Kelsey et al....	4-472, 473, 474
Cory et al. v. Ripley.....	4-504, 505
Way v. Howe.....	4-681
Hunt et al. v. Taylor et al.....	4-684
Burper et al. v. Sparhawk.....	4-685, 686, 688
Curran et al. v. Munger et al.....	6-84
Cornwall.....	6-328



	PAGE
Symonds v. Barnes.....	6-378
Mansfield.....	6-390
Ten Eyck & Choate.....	7-30
Hannocksburg & Block.....	7-42
U. S. v. Throckmorton et al.....	8-309
Hudson v. Bingham.....	8-501
Alston v. Robinett.....	9-74
Dingee v. Becker.....	9-510, 511
Dusenbury v. Hoyet.....	10-314
Houghton.....	10-337

## SECTION 35.

	PAGE
Wells, Jr.....	1-173
Burns & Burns.....	1-175
Drummond.....	1-234
Black & Secor.....	1-362
Waite & Crocker.....	1-377
Craft.....	1-382
Sheppard.....	1-456
Bradshaw v. Klein et al.....	1-544
Langley.....	1-561
Tuttle v. Truax.....	1-602
Princeton.....	1-620
Arledge.....	1-645
Bigelow et al.....	1-669
Dean et al.....	2-91
Bray.....	2-140
Arnold.....	2-161
Wadsworth v. Tyler.....	2-320
Gay.....	2-361
Locke.....	2-384
Haughey v. Albin.....	2-401
Foster v. Hackley & Sons.....	2-411
Meyer.....	2-422
Armstrong v. Rickey Bro.....	2-474
Hunt.....	2-542, 545
Colman.....	2-566
Martin v. Berry.....	2-636, 637, 638
Hollensshade.....	2-653
Randall & Sunderland.....	3-24
Davis & Green v. Armstrong.....	3-36
Ahl et al. v. Thorner.....	3-120, 123, 128
Burgess.....	3-196
White v. Rafferty.....	3-222
Nicodemus.....	3-233
Evans.....	3-262
Kingsbury et al.....	3-320, 321, 322, 323
Graham v. Stark et al.....	3-363, 368, 369
Smith.....	3-382
Scammon v. Cole & Hooker.....	3-394, 396, 403, 404

	PAGE
Davidson.....	3-420
Day v. Bardwell et al.....	3-456, 461
Campbell v. Traders' Nat. Bank et al.....	3-504
Askew.....	3-577
Driggs v. Moore et al.....	3-608
Briggs.....	3-639
Ballou.....	3-717
Wynne.....	4-24
Tomkin & Trewatha.....	4-55, 56, 57, 58
Freeman.....	4-65
Potter et al. v. Cogshell.....	4-79
Babbitt v. Walbrun & Co.....	4-124, 126
Bean, &c., v. Brookmire & Rankin.....	4-197, 202
Street v. Dawson.....	4-210
Richter's Estate.....	4-225, 226, 230
Wilson v. Stoddard.....	4-255
Hardy, Blake & Co. v. Bininger & Co.....	4-268
Butler.....	4-303, 304
Beattie, &c., v. Gardner et al.....	4-331, 337
Stevens.....	4-369
Kahley et al.....	4-379
Scott & McCarty.....	4-417, 422, 425, 426
Maurer v. Frantz.....	4-432, 433, 434
Vogel v. Lathrop.....	4-440, 443
Gregg.....	4-458
Eldridge.....	4-500, 501
Shaffer v. Fritchery & Thomas.....	4-549
Kipp.....	4-596
Darby's Trustees v. Boatman's Sav- ings Institution.....	4-604
Hubbard et al. v. Allaire Works.....	4-625, 626
Collins, &c., v. Gray et al.....	4-633, 634, 635
Cookingham, &c., v. Ferguson.....	4-642, 643
Andrews v. Graves.....	4-652
Giddnigs v. Dodd, Brown & Co.....	4-658, 659
O'Connor v. Parker et al.....	4-713
Golson v. Neihoff et al.....	5-61
Bunster.....	5-89
Hall v. Wager & Fales.....	5-184
Haskill v. Ingalls.....	5-208
Scammon v. Cole et al.....	5-259, 262, 267
Wilson v. City Bank of St. Paul.....	5-275
Lord.....	5-329
Bean v. Laffin.....	5-336
Sawyer et al. v. Turpin et al.....	5-343
Hood et al. v. Karper et al.....	5-361, 363, 365
Warner et al.....	5-415
Darby's Trustees v. Lucas.....	5-439
Warren & Rowe v. Tenth Nat. Bank et al.....	5-483

	PAGE		PAGE
Maltby v. Hotchkiss.....	5-488	Byrne.....	1-467, 468
Dow.....	6-14, 15	Phelps, Caldwell & Co.....	1-525
Toof et al. v. Martin.....	6-51	Frear.....	1-665
City Bank of Savings, Loan & Dis.....	6-75	Van Tuyl.....	2-71
Pratt, Jr., v. Curtis et al.....	6-141	Abbe.....	2-79
Judson v. Kelty et al.....	6-165, 168	Mead v. Nat. Bank.....	2-175
White v. Jones.....	6-178	Crockett et al.....	2-209
Kenyon & Fenton.....	6-242	Winkens.....	2-351
U. S. v. Pusey.....	6-290	Gay.....	2-361
Cornwall.....	6-328	Bigelow & Kellogg.....	2-375
North v. House et al.....	6-370	Wilson v. Brinkman et al.....	2-471
Cohn.....	6-385	Scheiffer & Garrett.....	2-592
Platt v. Archer.....	6-465, 466, 467, 472, 473, 474, 478, 491, 492, 495	Webb & Johnson.....	2-616
Stephens.....	6-535	Dibblee et al.....	2-620
Van Riper.....	6-576	Clark.....	3-17
Edmondson v. Hyde.....	7-11, 12	Sheppard.....	3-176
Hennocksburg & Block.....	7-41	Schumate & Blythe v. Hawthorne.....	3-229
Pusey.....	7-46	Foster & Pratt.....	3-238
Forsyth & Murtha.....	7-176	Holt, Jr.....	3-241
Perrin & Hance.....	7-284	Williams & Williams.....	3-288
Bingham v. Claflin et al.....	7-418	Hartough et al.....	3-423
Tiffany v. Lucas.....	8-49	Scofield et al.....	3-556
Morrell.....	8-122	Downing.....	3-753
Gilbert v. Priest.....	8-159, 165	Mellick.....	4-99
Jordan.....	8-185	Howard, Cole & Co.....	4-579
Seaver v. Spink.....	8-218, 219, 220	Penn et al.....	5-32, 33, 34
Hyde v. Sontag & Eldridge.....	8-226	Stevens.....	5-114
Sedgwick v. Lynch.....	8-296	Ieland & Leland.....	5-224, 226, 227
Walbrun et al. v. Babbitt.....	9-2, 8	Boston, Hartford & Erie R. R. Co.....	6-216, 218, 224
Smith v. Crawford.....	9-42	Price & Price.....	6-400
Wilson v. City Bank of St. Paul.....	9-99, 101, 102,	Stuart v. Hines et al.....	6-423
Opinion Atty.-General.....	9-118	Daggett.....	8-434
Cook v. Waters et al.....	9-160, 161	Knight.....	8-441, 443
Dole.....	9-195, 203	Lewis.....	8-546, 547
Leland et al. ....	9-213, 214, 216	Long & Co.....	9-240, 241
Catlin v. Hoffman.....	9-345, 346	Rice.....	9-373
Britton v. Payen et al.....	9-446	Jordan.....	9-418
Zahm v. Fry et al.....	9-550	Noonan.....	10-331
Clark & Daughtry.....	10-22, 26	Atkinson v. Kellogg.....	10-537
Morrison.....	10-106		
Pierson.....	10-123, 124		
Lane & Co. v. Boynton.....	10-139, 140		
Hamlin v. Pettibone.....	10-173, 174, 175, 176		
Halliburton v. Carter.....	10-361		
Brooke v. McCracken.....	10-463		
Piper v. Baldy.....	10-519, 520		

## SECTION 36.

	PAGE
Prankard & Prankard.....	1-298
Little.....	1-342

## SECTION 37.

	PAGE
Clark.....	3-17
Thornhill & Williams et al. v. Bank of Louisiana.....	3-437
Bromley & Co.....	3-689
Lady Bryan Mining Co.....	4-145
Adams v. Boston, Hart. & Erie R. R. Co.....	4-314, 315
Lady Bryan Mining Co.....	4-395
Bunster.....	5-87
Ala. & Chat. R. R. Co. v. Jones.....	5-103, 104

	PAGE
Sweatt v. Bos., Hart. & Erie R. R. Co.	5-239, 240, 245
Merchants' Ins. Co.	6-44
Ala. & Chat. R. R. Co.	6-109, 110, 113
Myer v. Aurora Ins. Co.	7-191
Winter v. Iowa Min. & N. P. R. R. Co.	7-290
Lake Sup. Sh. Canal R. R. & Iron Co.	7-384
Leiter et al. v. Payson.	9-206
Ansonia Brass & Cop. Co. v. New Lamp Chimney.	10-356, 358, 359
Sixpenny Sav. Bank et al. v. Est. of Stuyvesant Bank.	10-399, 402

## SECTION 38.

	PAGE
Patterson.	1-184
Ray.	1-207
Fredenburg.	1-271
Hill.	1-275
Glaser.	1-341
Craft.	1-379
Haughton.	1-461
Dean et al.	2-92
Housberger & Zibbelin.	2-95
Lanier.	2-159
Kimball.	2-205
Vogel.	2-431
Billing.	2-513
Vogel.	3-196
Dey.	3-308
Bromley & Co.	3-687, 689
Crawford.	3-699
Stuart v. Hines et al.	6-419
Preston.	6-551
Nounnan & Co.	7-22
Hannockburg & Block.	7-41
Dunn et al.	9-486
Litchfield.	9-507
Simmons.	10-260
Rogers.	10-446

## SECTION 39.

	PAGE
Commonwealth v. O'Hara.	1-93
Schick.	1-178, 180
Drummond.	1-234
Black & Secor.	1-356, 357, 358, 359, 362
Waite & Crocker.	1-377
Craft.	1-380, 382, 383, 384
Harden.	1-398

	PAGE
Corner v. Miller et al.	1-405
Jersey City Window Glass Co.	1-427, 428
Haughton.	1-462
Sutherland.	1-533
Langley.	1-561
Rosenfield.	1-578
Princeton.	1-618, 620
Brock v. Hoppock.	2-7
Dunham & Orr.	2-18, 20
Cone & Morgan.	2-21
Irving v. Hughes.	2-62, 63
Craft.	2-112
Arnold.	2-161
Wadsworth v. Tyler.	2-323
Rogers & Coryell.	2-398
Foster v. Hackley & Sons.	2-411
Louis & Rosenham.	2-452
Wilson v. Brinckman et al.	2-471
Armstrong v. Rickey Bro.	2-474
Wright.	2-492
Morgan, Root & Co. v. Mastic.	2-521
Colman.	2-565
Farren v. Crawford et al.	2-607
Doan v. Compton & Done.	2-608
Martin v. Berry.	2-636, 637
Hollensshade.	2-652
Clark.	3-17
Randall & Sutherland.	3-24
Davis & Green v. Armstrong.	3-36
Phelps v. Clasen & Clasen.	3-91
Ahl et al. v. Thorner.	3-123
McDermott Pat. Bolt Man. Co.	3-129
Goldschmidt.	3-166, 167, 168, 170
Thompson & McClellan.	3-185
Heinsheimer et al. v. Shea & Boyle.	3-191
Schoo.	3-216
Nicodemus.	3-231, 232, 233, 234, 235, 236
Evans.	3-262
Hollis v. Kenny et al.	3-310
Kingsbury et al.	3-320, 321, 323
Davis.	3-340, 342
Graham v. Stark et al.	3-364
Wells.	3-371, 373
Montgomery.	3-377
Hardy et al. v. Clark & Bining.	3-385, 387, 390
Davidson.	3-420, 421
Day v. Bardwell et al.	3-456, 461
Campbell v. Traders' Nat. Bank et al.	3-504
Clark v. Bining.	3-521
Ouimette.	3-575
Chamberlain & Chamberlain.	3-714, 715
Linn et al. v. Smith.	4-47

	PAGE		PAGE
Tomkin & Trewatha.....	4-56, 57, 58, 59	Hercules Life Ins. So.....	6-340
Terry & Cleaver.....	4-130	Marcer.....	6-351
Bloss.....	4-149	Platt v. Archer.....	6-465, 466, 467, 469, 472, 473, 474, 495
Mallory.....	4-156	Stephens.....	6-535
Bean v. Brookmire & Rankin.....	4-208	Cohn.....	7-32, 36
Richter's Estate... ..	4-225, 226, 228, 230	Woods.....	7-127
Hardy, Blake & Co. v. Bininger & Co.	4-268	Forsyth & Murphy.....	7-176, 178
Butler.....	4-305	Perrin & Hance.....	7-284
Stevens.....	4-369	Winter v. Iowa, Minn. & N. P. R.	
Smith, &c., v. Buchanan et al.....	4-400	R. Co.....	7-291, 292
Scott & McCarty.....	4-416, 417, 418, 419, 422, 423, 424, 425, 426	Mendenhall v. Carter.....	7-323
Maurer, &c., v. Frantz.....	4-492	Raynor.....	7-530, 534
Fogerty & Gerrity.....	4-452, 454, 455	Town et al.....	8-43
Walton & Walton.....	4-469, 470	Derby.....	8-112, 115
Shaffer v. Fritchery & Thomas.....	4-549	Hyde v. Sontag & Eldridge.....	8-226
Kipp.....	4-595, 596	Shehan.....	8-346
Darby's Trustees v. Boatman's Sav-		Wilson.....	8-397, 398
ings Inst.....	4-604	Smith v. Crawford.....	9-42
Watson.....	4-613, 614	Wilson v. City Bank of St. Paul.....	9-99, 100, 102
Hubbard v. Allaire Works.....	4-625	Leland et al.....	9-213, 214, 215
Collins v. Gray et al.....	4-633, 634, 635	Jordan.....	9-418
Cookingham, &c., v. Ferguson.....	4-642	Britton v. Payen et al.....	9-446
Gallinger.....	4-731	Joliet Iron & Steel Co.....	10-61, 66
Penn et al.....	5-32, 33	Scammon.....	10-67
Golson et al. v. Neihoff et al.....	5-61	Angell.....	10-74
Bunster.....	5-87	Pierson.....	10-123
Leighton.....	5-95, 96	Burch.....	10-150
Alabama and Chattanooga R. R. Co.		Barnett et al. v. Hightower & Butler.	
v. Jones.....	5-105		10-160
Hunt, Tillinghast & Co. v. Pooke &		Scull.....	10-166, 167, 168
Steere.....	5-164	Hamlin, &c., v. Pettibone.....	10-174
Haskell, &c., v. Ingalls.....	5-207, 208	Pickering.....	10-209
Sweatt v. Boston, Hartford and Erie		Warren Sav. Bank v. Palmer & Co.	
R. R. Co.....	5-248		10-240
Lord.....	5-329, 330	Simmons.....	10-254, 256, 259
Hood et al. v. Carper et al.....	5-365	Sutherland v. Davis.....	10-425
Hunt & Hornell.....	5-435	Francke, Jr., & Francke.....	10-441
Darby's Trustees v. Lucas.....	5-439	Comstock & Co.....	10-451
Maltby v. Hotchkiss.....	5-489	Smith, &c., v. Ely.....	10-564
Dow.....	6-14		
Baldwin et al. v. Wilder et al.....	6-86		
Alabama and Chattanooga R. R. Co.			
	6-110		
Bingham v. Richmond & Gibbs.....	6-128		
Bingham v. Frost. Same v. Williams.			
	6-130, 131, 132		
Stansell.....	6-184		
Kenyon & Fenton.....	6-241, 242, 245		
Butterfield.....	6-258		
Stuyvesant Bank.....	6-274		
U. S. v. Pusey.....	6-290		
Cornwall.....	6-305, 310, 312, 328		

## SECTION 40.

	PAGE
Costs and Fees.....	1-25
Commonwealth v. O'Hara.....	1-93
Patterson.....	1-130
Campbell.....	1-167
Black & Secor.....	1-354
Sutherland.....	1-532
Irving v. Hughes.....	2-63, 64, 67
Phelps v. Clasen & Clasen.....	3-88
Creditors v. Cozzens & Hall.....	3-282

	PAGE
Muller & Brentano.....	3-333, 335
Briggs.....	3-639
Bromley & Co.....	3-687, 691, 692
Fuller... ..	4-120
Harthill.....	4-392
Alabama & Chattanooga R. R. Co. v. Jones....	5-108
Mallory.....	6-28
Moses.....	6-182
Lady Bryan Mining Co.....	6-253
Cornwall.....	6-305
Stuart v. Hines et al.....	6-423
Kennedy & Macintosh.....	7-338
Ulrich et al.....	8-17, 19
Price & Miller.....	8-516, 517, 518
Joliet Iron and Steel Co.....	10-65
Obear, Thomas.....	10-155
Scull.....	10-167
Mills et al. v. Davis et al.....	10-349
Sutherland v. Davis.....	10-424
Lacy, Downs & Co.....	10-487

## SECTION 41.

	PAGE
Patterson.....	1-130
Sutherland.....	1-532
Scofield v. Moorhead.....	2-2
Brock v. Hoppock.....	2-7
Gordon, McMillen & Co. v. Scott & Allen.....	2-88
Randall & Sutherland.....	3-19
Phelps v. Clasen & Clasen.....	3-88
Goodfellow.....	3-453
Chandler.....	4-216
Morgan et al. v. Thornhill et al.....	5-8
Cornwall.....	6-312
Benham.....	8-95
Derby.....	8-115
Knickerbocker Ins. Co. v. Comstock.....	8-148
Goodman.....	8-384
Hawk Ice Melting Co.....	8-386, 389
Price & Miller.....	8-515, 517, 518, 519
Findlay.....	9-83
DeForrest.....	9-279, 280
Buchanan.....	10-100
Sutherland v. Davis.....	10-425
Rogers.....	10-447

## SECTION 42.

	PAGE
Hasbrouck....	1-77
Patterson.....	1-129

	PAGE
Robinson.....	1-291
Bradshaw v. Klein et al.....	1-544
Clark.....	3-16
Catlin v. Foster.....	3-546
Camden Rolling Mill Co.....	3-591, 593
Bromley & Co.....	3-689, 691
Maxwell et al. v. Faxton et al.....	4-211
Olmsted.....	4-241
Fogarty & Gerrity.....	4-453
Burper et al. v. Sparhawk.....	4-687
Kennedy & Macintosh.....	7-338
Safe Deposit and Sav. Inst.....	7-398
Heydette.....	8-333
Donohue & Page.....	8-454
Price & Miller.....	8-516, 517, 518
Lenihan v. Haman.....	8-559
Dole.....	9-198
De Forrest....	9-279
Mendenhall.....	9-381
Howes & Macy.....	9-425
Litchfield.....	9-507
Buchanan.....	10-99, 100, 101
Jay Cooke & Co.....	10-129, 131
Sutherland v. Davis.....	10-425
Lacy, Downs & Co....	10-483, 486, 488, 491

## SECTION 43.

	PAGE
Miller.....	1-412
Sherburne....	1-559
Jones.....	2-60
Dibblee et al.....	3-73
Palmer.....	3-283
Darby.....	4-211, 309, 311, 312
Zinn et al.....	4-373
Dewey.....	4-412
Zinn et al.....	4-436, 438
Darby's Trustees v. Boat. Sav. Inst.	4-601
Bakewell.....	4-619, 623
Stuyvesant Bank.....	6-275
Vetterlein et al.....	6-518, 520
Dole.....	9-198
Trowbridge.....	9-275, 276
Jay Cooke & Co... ..	10-128, 130
Sutherland v. Davis.....	10-425

## SECTION 44.

	PAGE
Patterson.....	1-154
Corner v. Miller et al.....	1-405
Adams.....	2-100

	PAGE
Day v. Bardwell et al.....	3-461
Rogers.....	3-566
Lewis.....	3-627
U. S. v. Clark.....	4-60
U. S. v. Prescott et al.....	4-114
Odell v. Wootten.....	4-185
Commonwealth v. Walker et al.....	4-676

## SECTION 45

Relates to bribery of Officers of Court, and prescribes the penalties.

## SECTION 46

Relates to forging the signature of the Judge or the Seal of the Court, and prescribes penalties therefor. There have been no decisions construing either of these Sections.

## SECTION 47.

	PAGE
Costs and Fees.....	1-25
Bellamy.....	1-100
Levy & Levy.....	1-138
Clark.....	1-189
Dean....	1-249, 251, 255, 258, 260, 261, 263
Cowles.....	1-281
Robinson.....	1-289, 290, 292, 294
Rathbone.....	1-295
Sherwood.....	1-346, 347, 348, 349
Hambright.....	2-500
Loder Bros.....	2-519
Lowenstein & Lowenstein.....	3-269

	PAGE
Preston.....	6-551
Van Riper.....	6-578
Donohue & Page.....	8-453, 454, 456
Fees for Registering.....	10-141

## SECTION 48.

	PAGE
Dean.....	1-263
Lang.....	2-481
Adams v. Boston, Hartford & Erie R. Co.....	4-315
York & Hoover.....	4-482
Hunt, Tillinghast & Co. v. Pooke & Steere.....	5-164
Ala. & Chatt. R. R. Co.....	6-109
Hennocksburg & Block.....	7-41
Smith et al. v. Man. Nat. Bank.....	9-124

## SECTION 49.

	PAGE
Day v. Bardwell et al.....	3-456
Smith v. Mason.....	6-10

## SECTION 50.

	PAGE
Corner v. Miller et al.....	1-405
Miller.....	1-412
Langley.....	1-568
Billing.....	2-513
Martin v. Berry.....	2-635, 639, 640
Thornhill & Williams et al. v. Bank of Louisiana.....	3-438
Day v. Bardwell et al.....	3-456, 460
Meekins et al. v. Creditors.....	3-511
Traders' Nat. Bank v. Campbell.....	6-354

# GENERAL ORDERS.

## CASES WHERE CITED OR EXPLAINED.

No. 1.			
	PAGE		PAGE
Dean.....	1-259	Heller.....	5-48, 51
Amendment to Rule 16.....	1-306	Clark & Bininger.....	6-195, 200
		Noyes. ....	6-281
		Bininger & Clark.....	9-570
No. 2.		No. 6.	
	PAGE		PAGE
Bellamy .....	1-69, 70	Sherwood.....	1-349
Dean.....	1-259	Heller.....	5-51
No. 3.		No. 7.	
	PAGE		PAGE
Seabury.....	10-92	Bellamy .....	1-100
No. 4.		Levy & Levy .....	1-110
	PAGE	Patterson.....	1-131, 132, 133
Morford.....	1-213	Levy & Levy.....	1-140
Dean.....	1-249, 250, 259	Morford .....	1-213
Robinson.....	1-289	Anonymous.....	1-215
Glaser....	1-338	Robinson....	1-288, 289
Hatcher.....	1-391	Glaser.....	1-340
Bromley & Co.....	3-690	Watts.....	2-448
		Heller.....	5-51
No. 5.		No. 8.	
	PAGE		PAGE
Orne.....	1-61	Robinson.....	1-292
Bellamy .....	1-65		
Hasbrouck.....	1-76		
Orne.....	1-81		
Bellamy.....	1-114, 116		
Patterson.....	1-129		
Morford.....	1-212		
Perry.....	1-222		
Dean.....	1-250, 251		
Glaser.....	1-338		
Gettleston.....	1-605		
Lane.....	2-310		
Watts.....	2-448		
No. 10.		No. 11.	
	PAGE		PAGE
Levy & Levy.....	1-138, 141, 142	Patterson.....	1-125
Griffen.....	1-372	Levy & Levy.....	1-143, 146
Leachman.....	1-392		



## No. 12.

	PAGE
Dean .....	1-258
Heller.....	5-51

## No. 13.

	PAGE
Hasbrouck.....	1-75, 77
Hunt.....	2-544
Briggs.....	8-639
Howes & Macy.....	9-425

## No. 14.

	PAGE
Orne.....	1-83
Morford.....	1-213
Anonymous.....	1-215
Hall .....	2-193

## No. 16.

	PAGE
Little .....	1-343
Abbe.....	2-80
Fogerty & Gerrity.....	4-454
Leland & Leland.....	5-225, 226
Boston, Hartford & Erie R. R. Co.....	6-219, 228, 229, 230
Lamb v. Damron.....	7-512

## No. 17.

	PAGE
Smith & Smith.....	1-600
Rosenberg.....	3-73
Grinnell & Co.....	9-34

## No. 18.

	PAGE
Lewis.....	1-239, 240
Prankard & Prankard.....	1-299
Little.....	1-343, 344
Abbe.....	2-76, 79, 80
Shumate & Blythe & c. v. Hawthorne.....	3-229
Foster & Pratt.....	3-238
Penn et al.....	5-32, 34
Stevens.....	5-114

## No. 19.

	PAGE
Perdue....	2-188
Kingon....	3-449
Hanna.....	4-411; 5-293
Hunt....	5-493
Blaisdell et al.....	6-82
Dole.....	7-542

## No. 21.

	PAGE
Bellamy.....	1-98
White & May... ..	1-218
Marks.....	2-577
Kingon.....	3-449
Hanna.....	4-411

## No. 22.

	PAGE
Metzler & Cowperthwaite.....	1-46

## No. 23.

	PAGE
Hill.....	1-17
Sherwood.....	1-350
Pulver.....	2-315

## No. 24.

	PAGE
Baum.....	1-6
Bellamy.....	1-98
Mawson.....	1-268
Rathbone.....	1-295, 297
Tallman.....	1-541
Schuyler.....	2-551
Burk.....	3-300
Heller.....	5-51
Frizelle.....	5-120
Seabury.....	10-92, 95

## No. 25.

	PAGE
Commonwealth v. O'Hara.....	1-94
Bellamy.....	1-96
Dean.....	1-256
Robinson .....	1-292, 293
Phelps, Caldwell & Co.....	1-528
Place & Sparkman.....	4-542

## No. 26.

	PAGE
Hunt.....	2-545
Coleman .....	2-672, 673
Paddock.....	6-134

## No. 27.

	PAGE
Anonymous .....	1-220
Glaser.....	1-339, 340
Ghiradelli.....	4-166

## No. 28.

	PAGE
Dean .....	1-256
Hall .....	2-194
Goodwin .....	3-418

## No. 29.

	PAGE
Hughes.....	1-280
Griffen.....	1-372
Scofield v. Moorhead.....	2-2
Heller.....	5-51
Seabury .....	10-92

## No. 30.

	PAGE
Robinson.....	1-8
Costs and fees .....	1-25
Bellamy.....	1-98
Dean.....	1-252, 253, 254, 255
Robinson.....	1-289, 290, 291, 292
Sherwood.....	1-347, 350
Anderson.....	2-588
Fees for registering.....	10-142

## No. 31.

	PAGE
Scofield v. Moorhead.....	2-2
Gordon & McMillen v. Scott & Allen.....	2-88

## PAGE

Dundore v. Coates & Bros.....	6-304
Sheehan .....	8-355, 356

## No. 32.

	PAGE
Hunt.....	2-545
Bingham v. Frost.....	6-132
Bingham v. Williams.....	6-132
Raynor.....	7-535, 536
Heydette.....	8-384
Howes & Macy.....	9-425

## No. 33.

	PAGE
Pulver.....	1-50
Orne.....	1-82
Patterson.....	1-131
Levy & Levy.....	1-137, 139, 140
Anonymous.....	1-215
Perry .....	1-222
Little.....	1-344
Leachman.....	1-392
Watts.....	2-448
Heller.....	5-49, 51
Fees for Registering.....	10-143
Christley.....	10-269

# THE BANKRUPT LAW.\*

## TITLE XIII.—The Judiciary.

CHAPTER III.—SEC. 563.—ORIGINAL JURISDICTION.

“ “ “ 566.—MODE OF TRIAL.

“ XII.—“ 711.—EXCLUSIVE JURISDICTION.

SEC. 563.—Eighteenth. \* \* \* \*  
The district courts are constituted  
courts of bankruptcy,<sup>1</sup> and shall

have in their respective districts<sup>2</sup>  
original jurisdiction<sup>3</sup> in all mat-

### 1. CONSTITUTIONAL POWER.

Day v. Bardwell, 3-455; Silverman,  
4-523; Goodall v. Tuttle, 7-193; Shear-  
man v. Bingham, 7-490; Reynolds, 9-50.

### 2. DIFFERENT DISTRICTS.

Julius A. Boylan, 1-2; Francis T. Prank-  
ard & Wm. C. Prankard, 1-297; Penn et  
al., 5-30.

### 3. JURISDICTION.

R. H. Barrow; Loet, Simon & Co.; W.  
D. Winter, 1-481; Wm. H. Magee, 1-522;  
Jones v. Leach et al., 1-595; Thos. F.  
Bowie, 1-628; Langley v. Perry, 2-596;  
Columbian Metal Works, 3-75; New York  
Kerosene Co., 3-125; Ulrich, 3-133; High  
& Hubbard, 3-191; Wilbur, 3-276; Clark  
& Bininger, 3-487; Fogerty & Gerrity,  
4-451; Sherman et al. v. Bingham et al.,  
5-34; Barstow v. Peckham et al., 5-72;  
Skelley, 5-214; Peiper v. Harmer, 5-252;  
Scammon v. Cole et al., 5-257; State of  
North Carolina v. Trustees of University,  
et al., 5-466; Dow, 6-10; Merchants' Ins.

Co., 6-43; Alabama & Chattanooga R. R.  
Co., 6-107; Pratt, Jr. v. Curtis et al., 6-  
139; Independent Ins. Co., 6-169; Blake v.  
The Alabama & Chattanooga R. R. et al.,  
6-331; Jobbins v. Montague et al., 6-509;  
Paine v. Caldwell, 6-558; Alabama and  
Chattanooga R. R. Co. v. Jones, 7-145;  
Goodall v. Tuttle, 7-193; Garrison v.  
Markley, 7-246; Bachman v. Packard,  
7-353; Woods et al. v. Buckewell et al.,  
7-405; Shearman v. Bingham et al.,  
7-490; Lamb v. Damron, 7-509; Casey,  
8-71; Pittock, 8-78; Marshall v. Knox et  
al., 8-97; Payson v. Dietz, 8-193; Mead  
v. Thompson, 8-529; Cook v. Waters et al.,  
9-155; Cook et al., 9-155; Joseph M. Hill,  
10-133; A. S. Spaulding v. J. McGovern  
and wife and Miller Ford, 10-188; Penny  
v. Taylor, 10-201; Chandler v. Siddle,  
10-236; Solomon Simmons, 10-254; Max-  
well v. McCune, 10-306; Brooks v. Mc-  
Cracken, 10-461; T. A. & J. M. Allen &  
Co. v. Montgomery et al., 10-503; Mossel-  
man & Poelaert, trustees, v. Meyer Caen,  
10-512; Woolfolk v. Murray; Bryan v  
Sims, 10-540.

\* The Sections of the Bankrupt Act have been taken from the Revised Statutes of the United States, as adopted June 22, 1874. On that day an important Amendment to the Act was also passed. Only legislative authority can interpolate this Amendment on the Revised Statutes. As Mr. Bump's work on bankruptcy is most familiar to the profession, I have, with his permission, to preserve uniformity in the interpolation of the Amendment, adopted his arrangement.—EDITOR.

ters and proceedings<sup>4</sup> in bankruptcy.<sup>5</sup>

SEC. 566.—The trial of issues of fact in the District Court, in all causes except in cases in equity and cases of admiralty and maritime jurisdiction, and except as otherwise provided in proceedings in bankruptcy, shall be by jury.<sup>6</sup>

#### 4. PROCEEDINGS.

Phelps v. Clasen, 3-87; Stewart, 3-108; Rosenberg, 3-130; Grady et al. v. Hawthorne, 3-227; Williams, 3-288; York & Hoover, 4-479; Miller v. O'Brien, 9-26; De Forest, 9-278.

#### 5. EFFECT ON STATE INSOLVENT LAWS.

Commonwealth v. O'Hara, 1-86; Comer v. Miller, 1-403; Perry v. Langley, 1-559; Hawkins, 2-378; Van Nostrand & Carr, 2-485; Martin v. Berry, 2-629; Thornhill v. Bank of Louisiana, 3-435; Day v. Bardwell, 3-455; Meekins, Kelly & Co. v. Creditors, 3-511; Cassard v. Kroner, 4-569; Rees v. Taylor, 4-710; Maltbie v. Hotchkiss, 5-485; Merchant Ins. Co., 6-43; Independent Ins. Co., 6-169, 260; Platt v. Archer, 6-465; Reynolds, 9-50.

#### 6. JURY TRIAL.

Lawson, 2-396; Sherry, 8-142; Hawkey Smelting Co., 8-385.

## CHAPTER XII.

SEC. 711.—The jurisdiction vested in the courts of the United States, in the cases and proceedings hereinafter mentioned, shall be exclusive<sup>7</sup> of the courts of the several States. \* \* \* \*  
Of all matters and proceedings in bankruptcy.<sup>8</sup>

#### 7. EXCLUSIVE JURISDICTION.

Leighton v. Kelsey et al., 4-471.

#### 8. PROCEEDINGS IN BANKRUPTCY.

Campbell, 1-165; Burns, 1-174; Donaldson, 1-181; Schnepf, 1-190; Barrow, Loeb, Simon et al., 1-481; Pennington v. Sale & Phelan, 1-572; Jones v. Leach, 1-595; Smith, 1-599; Bowie, 1-628; Sedgwick v. Menk, 1-675; Wallace, 2-184; Davis v. Bettell, 2-392; Vogel, 2-427; Kerosene Oil Co., 2-528; Brock v. Terrell, 2-643; J. M. Rosenberg, 3-180; Wilbur, 3-276; Clark, 3-491; Clark & Bininger, 3-518; Snedaker, 3-629; Clifton & Foster, 3-656; Samson and Burton, 4-1; Wynne, 4-23; Buchanan v. Smith, 4-897; Leighton v. Kelsey, 4-471; York & Hoover, 4-479; Markson v. Heaney, 4-510; Alabama R. R. Co. v. Jones, 5-97; Alden v. Boston, Hartford & Erie R. R. Co., 5-230; Davis v. Anderson, 6-145; Samson v. Blake, 6-410; Stuart v. Hines, 6-416; Goddard v. Weaver, 6-440; Goodall v. Tuttle, 7-193; Enoch Steadman, 8-319; Hutchings v. Muzzy Iron Works, 8-458; Whitman v. Butler, 8-487; Biddle Appeal, 9-144; Cook v. Waters, 9-155; Appleton v. Bowles, 9-354; Anderson, Geo. W., 9-360.

## TITLE LXI.—Bankruptcy.

### CHAPTER I.—COURTS OF BANKRUPTCY: THEIR JURISDICTION, ORGANIZATION, AND POWERS.

SEC. 4972.—SCOPE OF THE JURISDICTION OF COURTS OF BANKRUPTCY.

SEC. 4973.—AUTHORITY OF DISTRICT COURTS AND JUDGES.

SEC. 4974.—SESSIONS OF THE DISTRICT COURTS.

SEC. 4975.—POWERS OF DISTRICT COURTS TO COMPEL OBEDIENCE.

\* Repealed 1875.

SEC. 4976.—POWERS OF CIRCUIT JUDGE DURING THE ABSENCE, SICKNESS, OR DISABILITY OF DISTRICT JUDGE.

SEC. 4977.—POWERS OF THE SUPREME COURT, FOR THE DISTRICT OF COLUMBIA.

SEC. 4978.—POWERS OF THE DISTRICT COURTS, FOR THE TERRITORIES.

SEC. 4979.—JURISDICTION OF ACTIONS BETWEEN ASSIGNEES AND PERSONS CLAIMING ADVERSE INTERESTS.

SEC. 4980.—APPEALS TO CIRCUIT COURT.

SEC. 4981.—HOW TAKEN.

SEC. 4982.—HOW ENTERED.

SEC. 4983.—WAIVER OF APPEAL.

SEC. 4984.—APPEAL FROM DECISION REJECTING CLAIM.

SEC. 4985.—COSTS.

SEC. 4986.—POWER OF GENERAL SUPERINTENDENCE CONFERRED ON CIRCUIT COURT.

SEC. 4987.—SUPERINTENDENCE BY SUPREME COURTS OF TERRITORIES.

SEC. 4988.—POWER OF THE DISTRICT JUDGE, IN A DISTRICT NOT WITHIN ANY ORGANIZED CIRCUIT.

SEC. 4989.—APPEAL AND WRIT OF ERROR TO SUPREME COURT.

SEC. 4990.—SUPREME COURT MAY PRESCRIBE RULES.

SEC. 4991.—WHAT CONSTITUTES COMMENCEMENT OF PROCEEDINGS.

SEC. 4992.—RECORDS OF BANKRUPTCY PROCEEDINGS.

SEC. 4993.—REGISTER IN BANKRUPTCY

SEC. 4994.—WHO ARE ELIGIBLE.

SEC. 4995.—QUALIFICATIONS.

SEC. 4996.—RESTRICTIONS UPON REGISTERS.

SEC. 4997.—REMOVAL OF REGISTERS.

SEC. 4998.—POWERS OF REGISTERS.

SEC. 4999.—LIMITATIONS UPON POWERS OF REGISTERS.

SEC. 5000.—REGISTERS TO KEEP MEMORANDUM OF PROCEEDINGS.

SEC. 5001.—REGISTERS TO ATTEND AT PLACE DIRECTED BY JUDGE.

SEC. 5002.—POWER TO SUMMON WITNESSES.

SEC. 5003.—MODE OF TAKING EVIDENCE.

SEC. 5004.—DEPOSITIONS AND ACTS TO BE REDUCED TO WRITING.

SEC. 5005.—WITNESSES MUST ATTEND.

SEC. 5006.—CONTEMPT BEFORE REGISTER.

SEC. 5007.—REGISTERS MAY ACT FOR EACH OTHER.

SEC. 5008.—PAYMENT OF FEES OF REGISTERS.

SEC. 5009.—CONTESTED ISSUES TO BE DECIDED BY JUDGE.

SEC. 5010.—CERTIFICATES OF MATTERS TO BE DECIDED BY JUDGE.

SEC. 5011.—APPEAL FROM JUDGE'S DECISION UPON QUESTIONS SUBMITTED.

SEC. 5012.—PENALTIES AGAINST OFFICERS.

SEC. 5013.—DEFINITIONS.

SEC. 4972.—The jurisdiction conferred upon the district courts as courts of bankruptcy shall extend '—

First. To all cases and controversies arising between the bankrupt and any creditor or creditors who

#### 9. CONSTRUCTION.

Glaser, L., 1-336; Hirsch, 2-3; Richardson, 2-202; Markson v. Heaney, 4-510; Sheerman v. Bingham, 5-34; Jobbins v. Montague, 6-509; Paine v. Caldwell, 6-558;

Goodall v. Tuttle, 7-193; Sherman v. Bingham, 7-490; Cook v. Waters, 9-155; Penny v. Taylor, 10-201; Brooke v. McCracken, 10-461; Allen & Co. v. Montgomery et al., 10-503; Woolfolk v. Murray, 10-540.

shall claim any debt or demand under the bankruptcy.<sup>10</sup>

Second. To the collection of all the assets of the bankrupt.

Third. To the ascertainment and liquidation of the liens and other specific claims thereon.<sup>11</sup>

Fourth. To the adjustment of the various priorities and conflicting interests of all parties.<sup>12</sup>

Fifth. To the marshaling and disposition of the different funds and assets, so as to secure the rights of all parties and due distribution of the assets among all the creditors.<sup>13</sup>

Sixth. To all acts, matters, and things to be done under, and in virtue of, the bankruptcy, until the final distribution and settlement of the estate of the bankrupt, and the close of the proceedings in bankruptcy.<sup>14</sup>

*Provided*, That the court having charge of the estate of any bankrupt may direct that any of the legal assets or debts of the bankrupt, as contradistinguished from equitable demands, shall, when such debt does not exceed five hundred dollars, be collected in the courts of the State where such bankrupt resides, having

#### 10. COLLECTION DEBTS.

Avery v. Johann, 8-144; Stapler, 9-142.

#### 11. LIENS.

Hugh Campbell, 1-165; Donaldson, 1-181; Francis Schnepf, 1-190; Henry Bernstein, 1-199; Sampson D. Bridgman, 1-312; Alexander Stewart v. Siegfried Isidor et al., 1-485; Elijah E. Winn, 1-499; Charles E. Beck, 1-588; John P. Smith & James Smith, 1-599; Edward Bigelow, David Bigelow, and Nathan Kellogg, 1-667; Salmons, 2-56; Brooks, 2-466; Hambright, 2-498; Mc-Intosh, 2-506; J. H. Morrow v. J. B. Young, 2-665; Wilbur, 3-276; Dey, 3-305; Hinds, 3-351; Cozart, 3-508; Scott, 3-742; Dean, 3-769; Joseph J. Bowman v. Leander D. Harding, 4-20; W. Y. Lacy, 4-62; Hoyt et al. v. Freel et al., 4-131; Weeks, 4-364; Klancke, 4-648; Sands Ale Brewing Co., 6-101; Stuart v. Hines et al., 6-416; Goddard v. Weaver, 6-440; Ship Edith, 6-449; Mitchell, 8-47; Jordan, 8-180; Stoddard v. Locke, 9-71; Wilson et al., 9-97; Appleton v. Bowles et al., 9-354; Dyke & Marr, 9-430; Fourth Nat. Bank of Chicago v. City Nat. Bank, Grand Rapids, 10-44; Harlow, 10-280; St. Helens Mill Co., 10-414; Meeks v. Whatley, 10-498.

#### 12. PRIORITY.

Webb & Johnson, 2-614; Jordan, 8-182.

#### 13. CLAIM.

Howard, Cole & Co., 6-872; Paddock, 6-896; Cole v. Roach, 10-288; Edward Hagan, 10-388.

#### 14. CONTROL OVER PROCEEDINGS IN STATE COURTS.

Campbell, 1-165; Burns, 1-174; Donaldson, 1-181; Schnepf, 1-190; Bernstein, 1-199; Pennington v. Lowenstein, 1-570; Pennington & Sale v. Phelan, 1-572; Hafer & Brother, In re, 1-586; Jones v. Leach, 1-595; Bowie, 1-628; Irving v. Hughes, 2-62; Wallace, 2-134; Hill, M. W., 2-140; Wilson v. Brinkman, 2-468; Marks, 2-575; Wilbur, 3-276; Muller v. Brentano, 3-329; Clark v. Bininger, 3-518; Clifton v. Foster, 3-656; Fuller, 4-115; Iron Mountain Co., 4-645; Samson v. Burton, 5-459; Mallory, 6-22; Lady Bryan Mining Co., 6-252; Samson v. Clark, 6-403; Ellerhorst, 7-49; Atkinson, R., 7-143; Horter v. Harland, 7-238; Warren v. Tenth Nat. Bk., 7-481; Ulrich, 8-15; Hyde v. Bancroft, 8-24; Marshall v. Knox, 8-97; Davis, J., 8-167; Whitman v. Butler, 8-487; Weamer, David, 8-527; Dillard, 9-8; Citizens' Savings Bank, 9-152; Sutherland & Lake Superior Canal Co., 9-298; Shuey, William H., 9-526; Noonan, 10-331; Mills v. Davis et al., 10-340; Allen v. Montgomery, 10-503; Cole v. Roach, 10-288; Cogdell v. Exum, 10-327.

jurisdiction of claims of such nature and amount.<sup>16</sup>

SEC. 4973.—The district courts shall be always open for the transaction of business in the exercise of their jurisdiction as courts of bankruptcy; and their powers and jurisdiction as such courts shall be exercised as well in vacation as in term time;<sup>16</sup> and a judge sitting at chambers shall have the same powers and jurisdiction, including the power of keeping order and of punishing any contempt of his authority,<sup>17</sup> as when sitting in court.

SEC. 4974.—A district court may sit for the transaction of business in bankruptcy, at any place within the district, of which place and of the

time of commencing session the court shall have given notice, as well as at the places designated by law for holding sessions of such court.

SEC. 4975.—The district courts as courts of bankruptcy shall have full authority to compel obedience to all orders and decrees passed by them in bankruptcy, by process of contempt and other remedial process, to the same extent that the circuit courts now have in any suit pending therein in equity.<sup>18</sup>

SEC. 4976.—In case of a vacancy in the office of district judge in any district, or in case any district judge shall, from sickness, absence, or other disability, be unable to act, the cir-

#### 15. PROCEEDINGS IN THE DISTRICT COURT, SITTING AS A COURT OF BANKRUPTCY.

Davidson, 2-114; Wallace, 2-134; Bell v. Beckwith, 2-241; Smith, J. O., 2-297; Vogel, 2-427; Foster v. Ames, 2-455; Kerosene Oil Co., 2-528; Hunt, 2-539; People's Mail Steamship Co., 2-553; Marks, 2-575; Kerosene Oil Co., 3-125; Bonesteel, 3-517; Ballou, 3-717; Norris, 4-35; Wilson v. Stoddard, 4-254; Starkweather v. Cleveland Ins. Co., 4-341; Shaffer v. Fritchery, 4-548; Masterson, 4-553; Barstow & Peckham et al., 5-72; Brombey v. Smith et al., 5-152; Knight v. Cheney, 5-305; Smith v. Mason, 6-1; Rogers v. Winsor, 6-246; Samson v. Clark & Burton, 6-408; Samson v. Blake, 6-410; Jobbins v. Montagu et al., 6-509; Ferguson v. Peckham, 6-509; Ala. & Chat. R. R. Co. v. Jones, 7-145; Goodall v. Tuttle, 7-193; Ulrich et al., 8-15; Casey, Edward A., 8-71; Bank of Madison, 9-184; Sabin, Philo R., 9-383; Wood Mower & Reap. Co. v. Brooks, 9-395.

#### SUITS BY ASSIGNEES—IN STATE COURTS.

Peiper v. Harmer, 5-252; State of North

Carolina v. Trustees of University et al., 5-466; Central Bank, 6-207; Bingham v. Claffin, 7-412; Voorhees v. Frisbie, 8-152; Gilbert v. Priest, 8-159; Payson v. Dietz, 8-198; Stuart v. Aumuelier et al., 8-541; Cook v. Waters, 9-156.

#### 16. DISTRICT COURT.

Sampson v. Burton et al., 4-1; Dupee, 6-89; Sampson v. Clark & Burton, 6-403; Sampson v. Blake et al., 6-410.

#### 17. CONTEMPT.

Josiah Carpenter, 1-299; Samuel Glaser, 2-398; Creditors v. Cozzens & Hall & McCreery, 3-281; Feeny, 4-233; Atkinson, 7-143; Hayden, 7-192; Phelps v. Sellick, 8-390; South Side Railroad Co., 10-274.

#### 18. MANNER OF PROCEEDING.

Hirsch, 2-3; Creditors v. Cozzens, 3-281; R. Atkinson, 7-143.



cuit judge of the circuit in which such district is included may make, during such disability or vacancy, all necessary rules and orders preparatory to the final hearing of all causes in bankruptcy, and cause the same to be entered or issued, as the case may require, by the clerk of the District Court.

SEC. 4977.—The same jurisdiction, power, and authority which are hereby conferred upon the district courts in cases in bankruptcy are also conferred upon the Supreme Court of the District of Columbia, when the bankrupt resides in that district.

SEC. 4978.—The same jurisdiction, power, and authority which are hereby conferred upon the district courts in cases in bankruptcy are also conferred upon the district courts of the several Territories, subject to the general superintendence and jurisdiction conferred upon circuit courts

by section *four thousand nine hundred and eighty-six*, when the bankrupt resides in either of the Territories. This jurisdiction may be exercised, upon petitions regularly filed in such courts, by either of the justices thereof while holding the District Court in the district in which the petitioner or the alleged bankrupt resides.

SEC. 4979. — The several circuit courts shall have, within each district, concurrent jurisdiction with the District Court of any district, whether the powers and jurisdiction of a circuit court have been conferred on such district court, or not, of all suits at law or in equity" brought by an assignee in bankruptcy against any person claiming an adverse interest, "or owing any debt" to such bankrupt, or by any such person against an assignee, touching any property or rights of the bankrupt, transferable to or vested in such assignee."

#### 19. AT LAW AND IN EQUITY.

Irving v. Hughes, 2-62; Richardson, 2-202; Foster v. Ames, 2-455; Alexander, 3-29; Kerosene Oil Co., 3-125; Bonesteel, 3-517; Ballou, 3-717; Norris, 4-35; Markson & Spaulding v. Heaney, 4-510; Master-son, 4-553; Morgan v. Thornhill, 5-1; Knight v. Cheney, 5-305; Smith v. Mason, 6-1; Jobbins v. Montague, 6-509; Hyslop v. Hoppock, 6-552; Paine v. Caldwell, 6-558; Goodall v. Tuttle, 7-193; Bachman v. Packard, 7-353; Shearman v. Bingham, 7-490; Lamb v. Damson, 7-509; Marshall v. Knox, 8-97.

#### 20. ADVERSE INTEREST.

Wadsworth & Tyler, 2-316; Foster v. Hackley & Sons, 2-406; Babbitt v. Walbran & Co., 4-121; Wright v. Johnson, 4-627; Mitchell v. McKibbin, 8-548.

#### 21. DEBTS.

Street v. Dawson, 4-207.

#### 22. TO RECOVER PROPERTY FRAUDULENTLY TRANSFERRED.

Bradshaw v. Klein, 1-542; Pennington v. Lowenstein, 1-570; Pennington v. Sale & Phelan, 1-572; Jones v. Leach, 1-595; Bowie, 1-628; March v. Heaton & Hubbard, 2-180; Davis, 2-392; Foster et al. v. Ames et al., 2-455; Wilson v. Brinkman et al., 2-468; Sedgwick v. Place, 3-139; Lee v. Franklin Av. S. I., 3-218; Scammon v. Cole, 3-393; Traders' Nat. Bank avs. Campbell, 3-498; Benjamin v. Graham, 4-391; Vogle v. Lathrop, 4-439; Beers v. Place & Co., 4-459; Shaffer v. Fritchery & Thomas, 4-548; Darby Trustees v. Boatman's S. I., 4-601; Post v. Corbin, 5-11; Taylor v. Rasch & Bernhart, 5-399; State of North Carolina v. Trustees of University, 5-466; Pratt, Jr., v. Curtis et al., 6-139; White v. Jones, 6-175; Blake v. Ala. & Chat. R. R. Co., 6-331; Samson v. Clark & Burton, 6-403; Platt v. Archer, 6-465; Hyslop v. Hoppock et al., 6-552; Ala. & Chat. R. R. Co. & Jones, 7-145; Garrison v. Markley, 7-246;

**SEC. 4980.**—Appeals<sup>22</sup> may be taken from the district to the circuit courts, in all cases in equity, and writs of error<sup>24</sup> from the circuit courts to the district courts may be allowed in cases at law arising under or authorized by this title,<sup>25</sup> when the debt or damages claimed amount to more than five hundred dollars; and any supposed creditor whose claim is wholly or in part rejected, or an assignee who is dissatisfied with the allowance of a claim, may appeal from the decision of the District Court to the Circuit Court for the same district.<sup>26</sup>

**SEC. 4981.**—No appeal shall be allowed in any case from the District to the Circuit Court unless it is claimed, and notice given thereof to the Clerk of the District Court, to be en-

tered with the record of the proceedings, and also to the assignee or creditor, as the case may be, or to the defeated party in equity, within ten days<sup>27</sup> after the entry of the decree or decision appealed from; nor unless the appellant at the time of claiming the same shall give bond in the manner required in cases of appeals in suits in equity; nor shall any writ of error be allowed unless the party claiming it shall comply with the provisions of law regulating the granting of such writs.<sup>28</sup>

**SEC. 4982.**—Such appeal shall be entered at the term of the Circuit Court which shall be held within the district next after the expiration of ten days from the time of claiming the same.<sup>29</sup>

Warren v. Tenth Nat. Bk. et al., 7-481; Babbitt v. Burgess, 7-561; Edward A. Casey, 8-71; Marshall v. Knox, 8-97; Phelps v. Sellick, 8-390; Smith v. Little, 9-111; Lockett v. Hoge, 9-167; Sutherland v. Lake Superior Canal Co., 9-298; Burfee v. First National Bk. of Janesville, 9-314; Keenan v. Shannon et al., 9-441; Wm. H. Shuey, 9-526; First Nat. Bk. v. Cooper et al., 9-529; Zahm v. Fry et al., 9-546; David W. Jones, 9-556.

#### 28. APPEAL.

O'Brien, 1-176; J. M. Reed, 2-9; Alexander, 3-29; Ruddick v. Billings, 3-61; Rosenberg, 3-73; Noble, 3-97; Benjamin v. Hart, 4-408; York & Hoover, 4-479; Place & Sparkman, 4-541; Morgan et al. v. Thornhill et al., 5-1; Baldwin v. Rapplee, 5-19; Masterson v. Howard et al., 5-130; Scammon v. Cole et al., 5-257; Thornhill et al. v. Bank of Louisiana, 5-371; Samson v. Clark & Burton, 6-403; Edward A. Casey, 8-71; Coit v. Robinson et al., 9-289.

#### 24. WRIT OF ERROR.

Ruddick v. Billings, 3-61; Phelps v. A. B. & C. L. Classen, 3-87; Edmondson v. Hyde,

7-1; Babbitt v. Burgess, 7-561; Knickerbocker Ins. Co. v. Comstock, 8-145; Walbrun v. Babbitt, 9-1.

#### 25. CONSTRUCTION.

O'Brien, 1-176; Alexander, 3-29; Ruddick v. Billings, 3-61; Street v. Dawson, 4-207; York & Hoover, 4-479; Morgan v. Thornhill et al., 5-1; Knight v. Cheney, 5-305; Knickerbocker Ins. Co. v. Comstock, 8-145; Coit v. Robinson et al., 9-289.

#### 26. REJECTED CLAIM.

Coleman, 2-671; Benjamin v. Hart, 4-408; York & Hoover, 4-479; Place & Sparkman, 4-541; Troy Woolen Co., 8-412.

#### 27. TIME.

Bellamy, 1-64; Tallman, 1-540; Canady, 3-11; Alexander, 3-29; York & Hoover, 4-479; Place & Sparkman, 4-541; Baldwin v. Rapplee, 5-19.

#### 28. WRIT OF ERROR.

Knickerbocker Ins. Co. v. Comstock et al., 8-145; Sheehan, 8-345.

#### 29. COMPLIANCE IN TIME ESSENTIAL TO JURISDICTION.

Alexander, 3-29; Kyler, 3-46; Baldwin

**SEC. 4983.**—If the appellant in writing waives his appeal before any decision thereon, proceedings may be had in the District Court as if no appeal had been taken.<sup>30</sup>

**SEC. 4984.**—A supposed creditor who takes an appeal to the Circuit Court from the decision of the District Court, rejecting his claim in whole or in part, shall, upon entering his appeal in the Circuit Court, file in the clerk's office thereof, a statement in writing of his claim,<sup>31</sup> setting forth the same, substantially, as in a declaration for the same cause of action at law, and the assignee shall plead or answer thereto in like manner, and like proceedings shall thereupon be had in the pleadings, trial, and determination of the cause, as in actions at law commenced and prosecuted, in the usual manner, in the courts of the United States, except that no execution shall be awarded against the assignee for the amount of a debt found due to the creditor.

*v. Rapplee*, 5-19; *Troy Woolen Co.*, 6-16; *Knickerbocker Ins. Co. v. Comstock*, 8-145; *Coit v. Robinson et al.*, 9-289.

### 30. WAIVER.

*Bryan*, 3-110; *Hutto*, 3-787.

### 31. PLEADINGS UNDER THIS SECTION.

*Catlin v. Foster*, 3-540; *Place & Sparkman*, 4-541; *Blandin*, 5-89.

### 32. CONSTRUCTION.

*J. M. Reed*, 2-9; *Craft*, 2-111; *Bill v. Beckwith et al.*, 2-241; *W. E. Robinson*, 2-342; *J. H. Kimball*, 2-354; *Langley v. Perry*, 2-596; *Farrin v. Crawford et al.*, 2-602; *Alexander*, 3-29; *Ruddick & Billings*, 3-61; *New York Kerosene Oil Co.*, 3-125; *Clark & Bininger—Beecher, Assignee*, 3-487; *Clark & Bininger*, 3-489; *Bonesteel*, 3-517; *Littlefield v. Delaware and Hudson*

**SEC. 4985.**—The final judgment of the Circuit Court, rendered upon any appeal provided for in the preceding section, shall be conclusive, and the list of debts shall, if necessary, be altered to conform thereto. The party prevailing in the suit shall be entitled to costs against the adverse party, to be taxed and recovered as in suits at law; if recovered against the assignee, they shall be allowed out of the estate.

**SEC. 4986.**—The Circuit Court for each district<sup>32</sup> shall have a general superintendence and jurisdiction of all cases and questions arising in the District Court for such district, when sitting as a Court of Bankruptcy, whether the powers and jurisdiction of a Circuit Court have been conferred on such District Court or not; and, except when special provision is otherwise made, may, upon bill, petition, or other proper process of any party aggrieved, hear and determine the case as in a Court of Equity;<sup>33</sup> and the powers and juris-

*Canal Co.*, 4-257; *York & Hoover*, 4-479; *Place & Sparkman*, 4-541; *Morgan et al. v. Thornhill et al.*, 5-1; *Sweat v. Boston, Hartford and Erie R. R. Co.*, 5-234; *Knight v. Cheney*, 5-305; *Thornhill et al. & Williams v. Bank of Louisiana*, 5-367; *Smith v. Mason*, 6-1; *Alabama and Chattanooga R. R. Co. v. Jones*, 7-145; *McGilton et al.*, 7-294; *Woods et al. v. Buckwell et al.*, 7-405; *Sime & Co.*, 7-407; *Shearman v. Bingham*, 7-490; *Edward A. Casey*, 8-71; *Troy Woolen Co.*, 8-412; *Hall v. Allen*, 9-6; *Coit v. Robinson et al.*, 9-289; *First National Bank v. Cooper et al.*, 9-529.

### 33. PROCEEDINGS FOR REVIEW.

*J. M. Reed*, 2-9; *Ruddick v. Billings*, 3-61; *Littlefield v. Delaware and Hudson Canal Co.*, 4-257; *Adams v. Boston, Hartford and Erie R. R. Co.*, 4-314; *Place & Sparkman*, 4-541; *Sweat v. Boston, Hart-*

diction hereby granted may be exercised either by the court in term time, or, in vacation, by the Circuit Justice or by the Circuit Judge of the circuit.

SEC. 4987.—The several Supreme Courts of the Territories shall have the same general superintendence and jurisdiction over the acts and decisions of the justices thereof in cases of bankruptcy as is conferred on the Circuit Courts over proceedings in the District Courts.

SEC. 4988.—In districts which are not within any organized circuit of the United States, the power and jurisdiction of a Circuit Court in bankruptcy may be exercised by the District Judge.

SEC. 4989.—No appeal or writ of error shall be allowed in any case arising under this title, from the Circuit Courts to the Supreme Court, unless the matter in dispute in such case exceeds two thousand dollars."

SEC. 4990.—The General Orders" in bankruptcy heretofore adopted by the Justices of the Supreme Court as now existing, may be followed in proceedings under this title; and the justices may, from time to time, sub-

ject to the provisions of this title, rescind or vary any of those General Orders, and may frame, rescind, or vary other General Orders, for the following purposes:

*First.* For regulating the practice and procedure of the District Courts in bankruptcy, and the forms of petitions, orders, and other proceedings to be used in such courts in all matters under this title.

*Second.* For regulating the duties of the various officers of such courts.

*Third.* For regulating the fees payable and the charges and costs to be allowed, except such as are established by this title or by-law, with respect to all proceedings in bankruptcy before such courts, not exceeding the rate of fees now allowed by law for similar services in other proceedings.

*Fourth.* For regulating the practice and procedure upon appeals.

*Fifth.* For regulating the filing, custody, and inspection of records."

*Sixth.* And generally for carrying the provisions of this title into effect.

All such General Orders shall from time to time be reported to Congress, with such suggestions as the Justices may think proper.

And said Justices shall have power under said sections, by general regulations, to simplify, and so far as in

ford & Erie R. R. Co., 5-234; Thornhill et al. & Williams v. Bank of Louisiana, 5-367; Dow, 6-10; Boston, Hartford & Erie R. R. Co., 6-209; Cornwall, 6-305; Samson v. Clark & Burton, 6-403; Samson v. Blake et al., 6-410; Alabama and Chattanooga R. R. Co. v. Jones, 7-145; Perkins, 8-56; Edward A. Casey, 8-71; Marshall v. Knox, 8-97; First National Bank v. Cooper et al., 9-529.

#### 34. SUPREME COURT.

Morgan et al. v. Thornhill et al., 5-1;

Masterson v. Howard et al., 5-130; Knight v. Cheney, 5-305; Thornhill et al. & Williams, v. Bank of Louisiana, 5-377; Smith v. Mason, 6-1; Knickerbocker Insurance Co. v. Comstock, 8-145; Mead v. Thompson, 8-529; Hall v. Allen, 9-6; Coit v. Robinson et al., 9-289; First National Bank v. Cooper et al., 9-529.

#### 35. GENERAL ORDERS.

Kennedy & Mackintosh, 7-337.

#### 36. RECORDS.

Charles H. Wynne, 4-23.

their judgment will conduce to the benefit of creditors, to consolidate the duties of the Register, assignee, marshal, and clerk, and to reduce fees, costs and charges, to the end that prolixity, delay, and unnecessary expense, may be avoided."

SEC. 4991.—The filing of the petition<sup>37</sup> for an adjudication in bankruptcy, either by a debtor in his own behalf, or by any creditor against a debtor, shall be deemed to be the commencement of proceedings in bankruptcy."

SEC. 4992.—The proceedings in all cases of bankruptcy shall be deemed matters of record, but the same shall not be required to be recorded at large, but shall be carefully filed, kept, and numbered in the office of the clerk of the court, and a docket only, or short memorandum thereof, kept in books to be provided for that purpose, which shall be open to public inspection. Copies of such records, duly certified under the seal of the court, shall, in all cases, be presumptive evidence of the facts therein stated.<sup>38</sup>

SEC. 4993.—Each District Judge shall appoint, upon the nomination and recommendation of the Chief Justice of the Supreme Court, one or more Registers in bankruptcy, when

any vacancy occurs in such office, to assist him in the performance of his duties under this title, unless he shall deem the continuance of the particular office unnecessary.

SEC. 4994.—No person shall be eligible for appointment as Register in bankruptcy unless he is a counselor of the District Court for the district in which he is appointed, or of some one of the courts of record of the State in which he resides.

SEC. 4995.—Before entering upon the duties of his office, every person appointed a Register in bankruptcy shall give a bond to the United States for the faithful discharge of the duties of his office, in a sum not less than one thousand dollars, to be fixed by the District Judge, with sureties satisfactory to such Judge; and he shall, in open court, take and subscribe the oath prescribed in Sec. 1756, Title, "Provisions Applicable to Several Classes of Officers," and also an oath that he will not, during his continuance in office, be, directly or indirectly, interested in or benefited by the fees or emoluments arising from any suit or matter pending in bankruptcy in either the District or Circuit Court in his district.

SEC. 4996.—No Register or Clerk of Court, or any partner or clerk of

### 37. PRACTICE IN BANKRUPTCY.

Glaser, 1-336; Strauss, 2-48; Adams, 2-95; Schuyler, 2-549.

### ESTABLISHMENT OF FEES.

Dean, 1-249; J. H. Robinson, 1-285.

### 38. FILING PETITION.

C. H. Preston, 6-545.

### 39. COMMENCEMENT OF PROCEEDINGS.

Nounnan & Co., 7-15; Hennocksburg & Block, 7-37; McGready v. Harris, 9-135; Wm. H. Pierson, 10-107.

### 40. RECORDING.

Neale, 3-177; Seaver v. Spink, 8-218.

such Register or Clerk of Court, or any person having any interest with either in any fees or emoluments in bankruptcy, or with whom such Register or Clerk of Court shall have any interest in respect to any matter in bankruptcy, shall be of counsel, solicitor, or attorney, either in or out of court, in any suit or matter pending in bankruptcy in either the Circuit or District Court of his district, or in an appeal therefrom. Nor shall they, or either of them, be executor, administrator, guardian, commissioner, appraiser, divider, or assignee, of or upon any estate within the jurisdiction of either of said Courts of Bankruptcy; nor be interested, directly or indirectly, in the fees or emoluments arising from any such trusts.

SEC. 4997.—Registers are subject to removal from office by the Judge of the District Court.

SEC. 4998.—Every Register in bankruptcy has power: “

*First.* To make adjudication of bankruptcy in cases unopposed.”

*Second.* To receive the surrender of any bankrupt.”

#### 41. POWER OF REGISTER—EXAMINATION.

Bellamy, 1-64; Hasbrouck, 1-75; Glaser, 1-336; Sherwood, 1-344; Gettleson, 1-604; Lanier, 2-154; Brant, 2-215; Lane, 2-309; Hyman, 2-333; Bogert & Evans, 2-585; Shafer & Hamilton, 2-586; Kingon, 3-446; U. S. v. Clark, 4-59; Carow, 4-543; Hanna, 5-292; F. & A. Speyer, 6-255; Abraham B. Clark, 9-67.

#### 42. ADJUDICATION OF BANKRUPTCY.

John T. Drummond, 1-231; James L. Fowler, 1-680; Goodfellow, 3-452; George

*Third.* To administer oaths in all proceedings before him.

*Fourth.* To hold and preside at meetings of creditors.

*Fifth.* To take proof of debts.

*Sixth.* To make all computations of dividends, and all orders of distribution.

*Seventh.* To furnish the assignee with a certified copy of such orders, and of the schedules of creditors and assets filed in each case.

*Eighth.* To audit and pass accounts of assignees.

*Ninth.* To grant protection.

*Tenth.* To pass the last examination of any bankrupt in cases whenever the assignee or a creditor do not oppose.

*Eleventh.* To sit in chambers and dispatch there such part of the administrative business of the court and such uncontested matters as shall be defined in general rules and orders, or as the District Judge shall in any particular matter direct.

SEC. 4999.—No Register shall have power to commit for contempt, or to make adjudication of bankruptcy when opposed, or to decide

W. Williams v. Charles Merritt, 4-706; Hunt, Tillinghast & Co. v. Pook & Steere, 5-161; Bush, 6-179; Boston, Hartford & Erie R. R. Co., 6-210; Derby, 8-106; Guy Wilson, 8-396; De Forrest, 9-278; Alonzo Murphy, 10-48; Raffauf, 10-69; Hill, 10-133; Blodget & Sanford, 10-145; Wm. J. Pickering, 10-208; M. J. O'Neil v. Geo. Dougherty, 10-294; Noonan, 10-330; Collins, 10-335; H. C. McFarland & Co., 10-381.

#### 43. SURRENDER.

Clark & Daughtrey, 10-21.



upon the allowance or suspension of an order of discharge.

SEC. 5000.—Every Register shall make short memoranda of his proceedings in each case in which he acts, in a docket to be kept by him for that purpose, and shall forthwith, as the proceedings are taken, forward to the clerk of the District Court a certified copy of these memoranda, which shall be entered by the clerk in the proper minute-book to be kept in his office.<sup>44</sup>

SEC. 5001.—The Judge of the District Court may direct a Register to attend at any place within the district, for the purpose of hearing such voluntary applications under this title as may not be opposed, of attending any meeting of creditors, or receiving any proof of debts, and, generally, for the prosecution of any proceedings under this title.<sup>45</sup>

SEC. 5002.—Every Register, so acting, shall have and exercise all powers, except the power of commitment, vested in the District

Court for the summoning and examination of persons or witnesses,<sup>46</sup> and for requiring the production of books, papers, and documents.

SEC. 5003.—Evidence or examination in any of the proceedings under this title may be taken before the court, or a Register in bankruptcy, *viva voce* or in writing, before a commissioner of the Circuit Court, or by affidavit,<sup>47</sup> or on commission, and the court may direct a reference to a Register in bankruptcy, or other suitable person, to take and certify such examination, and may compel the attendance of witnesses, the production of books and papers, and the giving of testimony in the same manner as in suits in equity in the Circuit Court.<sup>48</sup>

SEC. 5004.—All depositions of persons and witnesses taken before a Register, and all acts done by him, shall be reduced to writing, and be signed by him, and shall be filed in the clerk's office as part of the proceedings. He shall have power to administer oaths in all cases, and in

#### 44. DUTIES OF REGISTERS.

William D. Hill, 1-16; Bellamy, 1-64; Abraham E. Hasbrouck, 1-75; Freeman Orne, 1-79; John Bellamy, 1-96; Chas. G. Patterson, 1-101; John Bellamy, 1-118; Chas. G. Patterson, 1-147; William H. Hughes, 1-225; Mawson, 1-265; Andrew J. Walker, 1-335; Benjamin Sherwood, 1-344; Edward S. Sturgeon, 1-498; Henry Gettleston, 1-604; Puffer, 2-48; Edwin B. Dean v. Thos. F. Garrett 2-89; Wylie, 2-137; Lanier, 2-154; Brant, 2-215; Joseph M. Lane, 2-309; Hyman, 2-333; Henry Bogert & Robert D. Evans, 2-435; Comstock v. Wheeler, 2-561; Bond, 3-7; Herrman v. Herrman, 3-618; Loder, 3-655; Clark v. Bininger, 6-194, 6-202, 6-204;

F. & A. Speyer, 6-255; Jaycox & Green, 7-308; Reakirt, 7-329; Clark, 9-67.

#### 45. TRANSFERS TO DIFFERENT PLACES.

J. O. Smith, 1-243; Sherwood, 1-344.

#### 46. WITNESSES.

Fredenberg, 1-268; Wm. Griffin, 1-371; Secendorf, 1-626; Bellis & Milligan, 3-199; Lord, 3-248; Earle, 3-304; H. Lewis, 3-621; Woodward & Woodward, 3-719.

#### 47. AFFIDAVIT.

Moore & Bro. v. Harley, 4-242.

#### 48. THIS PROVISION EXCLUSIVE.

Dunn et al., 9-487.



relation to all matters in which oaths may be administered by commissioners of Circuit Courts.

SEC. 5005.—Parties and witnesses summoned before a Register shall be bound to attend in pursuance of such summons at the place and time designated therein, and shall be entitled to protection, and be liable to process of contempt in like manner as parties and witnesses are now liable thereto in case of default in attendance under any writ of subpoena.

SEC. 5006.—Whenever any person examined before a Register refuses or declines to answer, or to swear to or sign his examination " when taken, the Register shall refer the matter to the Judge, who shall have power to order the person so acting to pay the costs thereby occasioned, and to punish him for contempt, if such

person be compellable by law to answer such question or to sign such examination."

SEC. 5007.—Any Register may act in the place of any other Register appointed by and for the same District Court.

SEC. 5008.—The fees of Registers, as established by law or by rules and orders framed pursuant to law, shall be paid to them by the parties for whom the services may be rendered."

SEC. 5009.—In all matters where an issue of fact or of law " is raised and contested by any party to the proceedings before any Register, he shall cause the question or issue to be stated by the opposing parties in writing, and he shall adjourn the same into court for decision by the Judge."

#### 49. EXAMINATION.

John Bellamy, 1-64; Saml. W. Levy & Mark Levy, 1-105; Isidor Lyon, 1-111; Chas. G. Patterson, 1-125; Saml. W. Levy & Mark Levy, 1-136; Chas. G. Patterson, 1-150, 1-161; Isidor & Blumenthal, 1-264; Wm. O'Kell, 1-303; Edward P. Tanner, 1-316; Isaac Rosenfield, Jr., 1-319; Curtis Judson, 1-364; Stephen B. Leachman, 1-391; Jacob A. Koch, 1-549; John C. Collins, 1-551; Isaac Rosenfield, 1-575; Andrew P. Tuyl, 1-636; Blake, 2-10; Andrew P. Van Tuyl, 2-70; Julius L. Adams, 2-95; Carson & Hard, 2-107; Lanier, 2-154; McBrien, 2-197; J. L. Adams, 2-272; Bonesteel, 2-330; Brandt, 2-345; Robt. Feinberg, Martin Steenbock, & Gustave Pessels, 2-425; Robinson & Chamberlain, 2-516; Van Tuyl, 2-579; Morris Kyler, 2-650; Bond, 3-7; Craig, 3-100; Holt, 3-241; McBrien, 3-344; G. P. & B. W. Fay, 3-660; Bromley, 3-686; Andw. J. Solis, 4-68; Belden & Hooker, 4-194;

Sampson, assig., v. Clark & Burton, 6-403; Salkey & Gerson, 9-107; Jay Cooke & Co., 10-126; Witkowski, 10-208; Jacob Hymes, 10-433.

#### 50. ON COMMISSION.

Glaser, 2-398.

#### 51. PARTIES FOR WHOM SERVICES RENDERED.

Mackintire, 1-11; Hughes, 1-226; Scofield v. Moorehead, 2-1; Mealy, 2-128; Eidom, 3-160; Alfred Jackson, 8-424.

#### 52. ISSUES OF FACT AND LAW.

Pulver, 1-46; Patterson, 1-100; Levy, 1-136; Fredenburg, 1-268; Watts, 2-447; Clark & Binger, 6-202.

#### 53. CERTIFYING QUESTIONS.

J. W. Wright, 1-393; Bray, 2-139; Peck, 3-757; Haskell, 4-558.

SEC. 5010.—Any party “ shall, during the proceedings before a Register, be at liberty to take the opinion of the district judge upon any point or matter arising in the course of such proceedings, or upon the result of such proceedings, which shall be stated by the Register in the shape of a short certificate to the judge, who shall sign the same if he approve thereof; and such certificate so signed, shall be binding on all the parties to the proceeding; but every such certificate may be discharged or varied by the judge at chambers or in open court.

SEC. 5011.—In any proceedings within the jurisdiction of the court, under this title, the parties concerned, or submitting to such jurisdiction, may at any stage of the proceedings, by consent, state any questions in a special case for the opinion of the court, and the judgment of the court shall be final unless it is agreed and stated in the special case that either party may appeal, if, in such case, an appeal is allowed by this title. The parties may also, if they think fit, agree, that upon the questions raised by such special case being finally decided, a sum of money, fixed by the parties, or to be ascertained by the court, or in such

manner as the court may direct, or any property, or the amount of any disputed debt or claim, shall be paid, delivered, or transferred by one of such parties to the other of them, either with or without costs.”

SEC. 5012.—If any judge, Register, clerk, marshal, messenger, assignee, or any other officer of the several courts of bankruptcy shall, for anything done or pretended to be done under this title, or under color of doing anything thereunder, willfully demand or take, or appoint or allow any person whatever to take for him or on his account, or for or on account of any other person, or in trust for him or for any other person, any fee, emolument, gratuity, sum of money, or anything of value whatever, other than is allowed by law, such person shall forfeit and pay a sum not less than three hundred dollars and not more than five hundred dollars, and be imprisoned not exceeding three years.

SEC. 5013.—In this title “ the word “assignee,” and the word “creditor,” shall include the plural also; and the word “messenger” “ shall include his assistant or assistants, except in the provision for the fees of that officer. The word “marshal” “

---

#### 54. WHO MAY TAKE OPINION.

Levy, 1-136; Mawson, 1-265; Fredenberg, 1-268; Sherwood, 1-344; J. W. Wright, 1-393; Sturgeon, 1-498; Bray, 2-139; Watts, 2-447; Peck, 3-757; Haskell, 4-558.

#### 55. ANTICIPATING QUESTIONS.

Haskell, 4-558.

---

#### 56. DEFINITIONS.

Isaac Rosenfield, 1-575.

#### 57. MESSENGER.

Hitchings, 4-384.

#### 58. MARSHAL.

D. W. Briggs, 3-638; Harthill, 4-392; Comstock, 9-88; Howes & Macy, 9-423.

shall include the marshal's deputies; the word "person" shall also include "corporation;" and the word "oath" shall include "affirmation." And in all cases in which any particular number of days is prescribed by this title, or shall be mentioned in any rule or order of court or general order which shall at any time be made under this title, for the doing of any act, or for any other

purpose, the same shall be reckoned, in the absence of any expression to the contrary, exclusive of the first and inclusive of the last day, unless the last day shall fall on a Sunday, Christmas Day, or on any day appointed by the President of the United States as a day of public fast or thanksgiving, or on the Fourth of July, in which case the time shall be reckoned exclusive of that day also."

#### 59. PERSONS.

Adams v. Boston, Hartford & Erie R. R. Co., 4-314; York & Hoover, 4-479; Sweatt v. Boston, Hartford & Erie R. R. Co., 5-234; Ala. & Chat. R. R. Co., 6-107.

#### 60. "COMMERCIAL PAPER."

Alfred L. Wells, Jr., ex parte H. B. Claffin & Co., 1-171; Walter C. Cowles, 1-280; Jersey City Window Glass Co., ex parte R. B. Wigton, 1-426; William Leeds, 1-521; McDermott Bolt Manufact. Co., 3-128; Heinsheimer et al. v. Shea & Boyle, 3-187; Nickodemus, 3-230; Holles, Kenny et al., 3-310; Chandler, 4-213; Innes v. Carpenter, 4-412; Chappel, 4-540; Fenton & Kenyon, 6-238; Carter, 6-299; The Hercules Mutual Life Assurance Society, 6-338; Ess & Clarendon, 7-133; Mendenhall v. Carter, 7-320; Manheim, 7-342; Munn, 7-468; Jacob Raynor, 7-527; Clemens, 9-57; Weaver, 9-132; The Lake Superior Ship Canal R. R. & Iron Co., 10-76; T. Maxwell v. W. C. McCune et al., 10-307.

#### "COMMISSION MERCHANT."

Lenke v. Booth, 5-351.

#### "CONTEMPLATION OF BANKRUPTCY."

Goldschmidt, 3-164.

#### "CONTEMPLATION OF INSOLVENCY."

Potter, Dennison & Co. v. Jas. H. Coggeshall, trustee, 4-73.

#### "FIDUCIARY DEBTS."

Kimball, 2-204; Dennis Crounan v. Amanda C. Cotting, 4-667; Grover & Baker v. Clinton, 8-312; Wesley Halliburton, applt. v. Calvin T. Carter, respdt., 10-359.

#### "INSOLVENCY."

Gay, 2-338; Louis & Rosenham, 2-449; Wilson, assign., v. Brinkman et al., 2-468; J. B. Wright, 2-490; Morgan, Root & Co. v. Erman E. Mastick, 2-521; Dibblee et al., 2-617; Randall & Sunderland, 3-18; Wells, 3-371; Stranahan, assign. of Bannister, v. Gregory & Co., 4-427; Martin v. Toof, Phillips & Co., 4-488; Golson et al. v. Neihoff et al., 5-56; Hall v. Wager & Fales, 5-182; Wilson v. City Bank of St. Paul, 5-270; Sawyer et al. v. Turpin et al., 5-339; Toof et al. v. Martin, 6-49; Woods, 7-126.

#### "INTENT."

Brand, 3-324; Smith, 3-378; Campbell, assignee, v. Traders' Nat. Bank et al., 3-498; Chamberlain & Chamberlain, 3-710; Munger & Champlin, 4-295; Gregg, 4-456; Silverman, 4-522; Appleton v. Bowles et al., 9-354.

#### "MUTUAL DEBTS."

Catlin, assign., v. Foster, 3-540; Drake v. Rollo, assign., &c., of the Merchant's Ins. Co., 4-689; Hitchcock v. Rollo, assign., &c., of the Merchants' Ins. Co., 4-691; Bank of Madison, 9-184; Gray v. Rollo, 9-337.

**"ORDINARY COURSE OF BUSINESS."**

Collins & Farrington, assignees, v. Bell et al., 3-587; Babbitt v. Walbrun & Co., 4-121; Kahley et al., 4-378; Martin, assignee, &c., v. Toof, Phillips & Co., 4-488; Judson v. Kelly et al., 6-165; Union Pacific R. R. Co., 10-178.

**"REASONABLE CAUSE."**

James Black & Wm. Secor, 1-353; J. R. McDonough v. Raftery, 3-221; Graham, assignee, v. Stark, 3-357; Campbell, assignee, v. Traders' Nat. Bank, 3-498; Babbitt, assignee, v. Walbrun & Co., 4-121; Hall v. Wager & Fales, 5-182;

Lawrence v. Graves, 5-279; Darby's Trustees v. Lucas, 5-437; Toof et al. v. Martin, 6-49; Warren, assign., v. Delaware, Lackawanna & Western R. R. Co., 7-451; Buchanan et al. v. Smith, assignee, 7-513; Hamlin v. Pettibone, 10-173; Harrison v. McLaren, 10-244.

**"STRUGGLING TO KEEP UP."**

Tiffany v. Boatman's S. I., 9-245; Hyde v. Corrigan, 9-466.

**"TRADERS."**

Walter C. Cowles, 1-280; Rogers, 3-564; Woods, 7-126.

**CHAPTER II.****VOLUNTARY BANKRUPTCY.**

**SEC. 5014.—PETITION AND SCHEDULES.**

**SEC. 5015.—SCHEDULES OF DEBTS.**

**SEC. 5016.—INVENTORY OF PROPERTY.**

**SEC. 5017.—OATH TO PETITION AND SCHEDULES.**

**SEC. 5018.—OATH OF ALLEGIANCE.**

**SEC. 5019.—WARRANT TO MARSHAL.**

**SEC. 5020.—AMENDMENT OF SCHEDULE.**

**SEC. 5014.—If any person "residing" within the jurisdiction of the**

**United States," and owing debts "provable in bankruptcy exceeding**

**61. WHO MAY APPLY.**

Patterson, 1-125; Anonymous, 1-215; Dean, 1-249; James L. Fowler, 1-680; Adams, 2-272; Goodfellow, 3-452; Penn et al., 3-582; Wieslarski, 4-390; Farrell, 5-125.

**62. RESIDENCE.**

John Pulver, 1-46; Wm. S. Walker, ex parte J. S. Wiggin, 1-386; Fogerty & Gerrity, 4-450; Watson, 4-618.

**63. ALIENS.**

Goodfellow, 3-452.

**64. DEBTS.**

James W. Fallen, 2-277; Phelps v. A. B. & C. L. Clasen, 3-87; Miller v. Keys, 3-225; Sutherland, 3-314; Montgomery, 3-426; Brown, 3-584; Murray, 3-765; Richter's Estate, 4-221; Paddock, 6-132; Cornwall, 6-305; Knickerbocker Ins. Co. v. Comstock, 9-484; Chandler, 9-514; Parish, 9-573; Buckhouse & Gough, ex parte C. L. Flynn, 10-206; Hovey et al. v. Home Ins. Co., 10-224; Shuman v. Strauss, 10-300; Benjamin G. Dusenbury, executor, &c., appellant, v. Mark Hoyet, respondent, 10-313.

the amount of three hundred dollars, shall apply by petition " addressed to the judge of the judicial district " in which such debtor has resided or carried on business " for the six months next preceding the time of filing such petition, or for the longest period during such six months, setting forth his place of residence, his inability to pay all his debts in full, his willingness to surrender " all his estate and effects for the benefit of his creditors, and his desire to obtain a discharge from his debts, and shall annex to his petition a schedule, and inventory and valuation, in compliance with the next two sections, the filing of such petition shall be an act of bankruptcy, and such petitioner shall be adjudged a bankrupt."

SEC. 5015.—The said schedule must contain a full and true state-

ment of all his debts," exhibiting, as far as possible, to whom each debt is due, the place of residence of each creditor, if known to the debtor, and if not known, the fact that it is not known; also the sum due to each creditor, the nature of each debt or demand, whether founded on written security, obligation, or contract, or otherwise; the true cause and consideration of the indebtedness in each case, and the place where such indebtedness accrued; and also a statement of any existing mortgage, pledge, lien, judgment, or collateral or other security given for the payment of the same.

SEC. 5016.—The said inventory must contain an accurate statement of all the petitioner's estate, both real and personal, assignable under this title, describing the same and stating where it is situated, and

#### 65. PETITION.

J. Ogden Smith, 2-297; Randall & Sutherland, 3-18; Foster & Pratt, 3-237; " Lady Bryan Mining Co.," 4-144; Moore & Bro. v. Harley, 4-242; Wieselarski, 4-390; Leonard, 4-562; Farrell, 5-125; Butterfield, 6-257; Dundore v. Coates & Bros., 6-304; Sampson, assig., v. Clark & Burton, 6-403; Osage Valley & South Kansas R. R., 9-281; Sabin, 9-383.

#### 66. IN WHAT DISTRICTS.

W. S. Walker, 1-386; Magie, 1-522; Bailey, 1-613; Belcher, 1-666; Little, 2-294; Foster & Pratt, 3-236; Goodfellow, 3-452; Watson, 4-613; Alabama and Chattanooga R. R. Co., 6-107; Stuart v. Hines et al., 6-416.

#### 67. CARRYING ON BUSINESS.

Tatnall Bailey, 1-613; Wm. K. Belcher, 1-665; Darby, 4-211; Alabama and Chattanooga R. R. Co., 6-107.

#### 68. SURRENDER OF BANKRUPT.

Howes & Macy, 9-423.

#### 69. MARRIED WOMEN.

C. H. & D. P. Slichter, 2-336; Howland, 2-357; Kinkead, 7-439; Goodman, 8-380; Sedgwick v. Place, 10-28; Kehr et al. v. Smith, assig., 10-49; Collins, 10-335.

#### INFANT.

Derby, 8-106.

#### 70. PREPARATION OF SCHEDULES.

W. D. Hill, 1-16; Pulver, 1-47; Orne, 1-79; Anon., 1-123; Ray, 1-203; Perry, 1-220; Kingsley, 1-329; Harden, 1-395; Jones, 2-59; Anon., 2-141; Sallee, 2-228; Watts, 2-447; Van Nostrand v. Barr et al., 2-485; Payne & Bro. v. Able et al., 4-220; Schumpert, 8-415; Hudson v. Bingham, 8-494.

whether there are any, and, if so, what incumbrances thereon."

SEC. 5017.—The schedule and inventory must be verified<sup>72</sup> by the oath of the petitioner, which may be taken either before the District Judge or before a Register, or before a commissioner of the Circuit Court.

SEC. 5018.—Every citizen<sup>73</sup> of the United States petitioning to be declared bankrupt, shall, on filing his petition, and before any proceedings thereon, take and subscribe an oath of allegiance and fidelity to the United States, which oath may be taken before either of the officers mentioned in the preceding section, and shall be filed and recorded with the proceedings in bankruptcy.

SEC. 5019.—Upon the filing of such petition, schedule, and inventory, the judge or Register shall forthwith, if he is satisfied that the debts due from the petitioner exceed

three hundred dollars, issue a warrant<sup>74</sup> to be signed by such judge or Register, directed to the marshal for the district, authorizing him forthwith, as messenger, to publish<sup>75</sup> notices in such newspapers as the marshal shall select, not exceeding two; to serve written or printed notice,<sup>76</sup> by mail or personally, on all creditors upon the schedule filed with the debtor's petition, or whose names may be given to him in addition by the debtor; and to give such personal or other notice to any persons concerned as the warrant specifies;<sup>77</sup> but whenever the creditors of the bankrupt are so numerous as to make any notice now required by law to them, by mail or otherwise, a great and disproportionate expense to the estate, the court may, in lieu thereof, in its discretion, order such notice to be given, by publication in a newspaper or newspapers, to all such creditors whose claims, as reported, do not exceed the sums, respectively, of fifty dollars.

#### 71. PREPARATION OF INVENTORY.

W. D. Hill, 1-16; Orne, 1-57; Anon., 1-123; Beardsley, 1-304; Hummitsh, 2-12; Pomeroy, 2-14; O'Bannon, 2-15; Crockett & Jewett, 2-208; Sallee, 2-228; Hussman, 2-437; Beal, 2-587; Myric, 3-154; Pierce & Holbrook, 3-258; Connell, jr., 3-443; Freeman, 4-64; Wm. H. Pierson, 10-107.

#### 72. VERIFICATION OF PETITION.

Raynor, 7-527; Louis E. Steinman, 10-214; Solomon Simmons, 10-253; Jacob Hymes, 10-433.

#### 73. OATH OF ALLEGIANCE.

A. J. Walker, 1-335; U. S. v. Clark, 4-59.

#### 74. CONTENTS OF WARRANT.

W. D. Hill, 1-16; Heys, 1-21; Pulver, 1-46; Anon., 1-216; Perry, 1-220; Jones, 2-59; Hall, 2-192; Barnes v. Moore, 2-573.

#### 75. PUBLICATION.

Jesse H. Robinson, 1-8; Patrick C. Devlin & John Hagan, 1-35; John Bellamy, 1-64; Washington Marine Ins. Co., 2-648; David J. King & W. King, 7-279.

#### 76. NOTICE.

Wm. D. Hill, 1-16; Julius Heys, 1-21; John Pulver, 1-46; John Bellamy, 1-96; Anonymous, 1-122; Samuel W. Levy & Mark Levy, 1-107; Anonymous, 2-68.

#### 77. SERVICE OF PAPERS.

Kennedy & Macintosh, 7-337; Derby, 8-106.

SEC. 5020.—Every bankrupt shall be at liberty from [*time*] to time, upon oath, to amend<sup>78</sup> and correct his schedule of creditors and property, so that the same shall conform to the facts.<sup>79</sup>

---

78. AMENDMENTS.

Orne, 1-79; Morford, 1-211; Perry, 1-220; Little, 1-341; Ratcliffe, 1-400; Jones, 2-59; Watts, 2-447; Preston,

3-103; Connell, 3-443; B. Heller, 5-46.

79. OMISSION.

Beal, 2-58.

---

CHAPTER III.

INVOLUNTARY BANKRUPTCY.

SEC. 5021.—ACTS OF BANKRUPTCY.

SEC. 5022.—PRIOR ACTS OF BANKRUPTCY.

SEC. 5023.—WHO MAY FILE A PETITION.

SEC. 5024.—PROCEEDINGS AFTER FILING PETITION.

SEC. 5025.—SERVICE OF ORDER TO SHOW CAUSE.

SEC. 5026.—PROCEEDINGS ON RETURN DAY.

SEC. 5027.—COSTS OF TRIAL.

SEC. 5028.—WARRANT.

SEC. 5029.—DISTRIBUTION OF PROPERTY OF DEBTOR.

SEC. 5030.—SCHEDULE AND INVENTORY.

SEC. 5031.—PROCEEDINGS WHEN DEBTOR IS ABSENT.

SEC. 5021.—That any person residing,<sup>80</sup> and owing debts,<sup>81</sup> as aforesaid, who, after the passage of this act, shall depart from the State, District, or Territory of which he is an inhabitant, with intent to defraud his creditors;  
Or, being absent, shall, with such intent, remain absent;  
Or shall conceal<sup>82</sup> himself to avoid

---

80. CONSTRUCTION.

Black & Secor, 1-353; William H. Langley, 1-599; Dean v. Garrett, 2-89; Wadsworth v. Tyler, 2-316; Locke, 2-382; Dibblee, 2-617; Davis & Green v. Armstrong, 3-34; White v. Raftery, 3-221; Nickodemus, 3-230; Muller & Brentano, 3-329; Tonkin & Trewartha, 4-52; Fuller, 4-115; Silverman, 4-523; Geo. K. Collins v. Justus Gray et al., 4-631; Wilson v. City Bank, 9-97.

81. PETITIONERS' CLAIM.

Brock v. Hoppock, 2-7; Nickodemus,

3-230; Fox v. Eckstein, 4-373; Hunt, Tillinghast & Co. v. Pooke & Steere, 5-161; Thornhill et al. & Williams v. Bank of Louisiana, 5-367; Merchants' Insurance Co., 6-43; Independent Insurance Co., 6-169; Boston, Hartford & Erie R. R. Co., 6-209; Kinkead, 7-439; Walter S. Derby, 8-106; Graves et al. v. Winter et al., 9-357.

82. CONCEALMENT.

James L. Fowler, 1-680; O'Bannon, 2-15; Ernest Hussman, 2-438; Fox v. Eckstein, 4-373; Payne & Bro. v. Able et al., 4-220; Beecher v. Clark et al., 10-385.



the service of legal process" in any action" for the recovery of a debt or demand provable under this act;

Or shall conceal or remove any of his property to avoid its being attached, taken, or sequestered on legal process;

Or shall make any assignment," gift, sale, conveyance, or transfer of his estate, property, rights, or credits, either within the United States or elsewhere, with intent to delay, defraud, or hinder his creditors;"

Or who has been arrested" and held in custody under or by virtue of mesne process or execution, issued out of any court of the United States, or of any State, District, or Territory within which such debtor resides or

has property, founded upon a demand in its nature provable against a bankrupt's estate under this act, and for a sum exceeding one hundred dollars, and such process is remaining in force and not discharged by payment, or in any other manner provided by the law of the United States, or of such State, District, or Territory, applicable thereto, for a period of twenty days;

Or has been actually imprisoned" for more than twenty days in a civil action founded on contract for the sum of one hundred dollars or upward;

Or who, being bankrupt or insolvent," or in contemplation of bankruptcy or insolvency, shall

### 83. LEGAL PROCESS.

Black & Secor, 1-353; Craft, 1-378; Haughton, 1-460; J. B. Wright, 2-490; Diblee et al., 2-617; Washington Mar. Ins. Co., 2-648; Wells, 3-371; Hardy et al. v. Clark & Bininger, 3-385; Hardy, Blake & Co. v. Bininger & Co., 4-262; Chappel, 4-540; Wright v. Filley, 4-611; Merchants' Ins. Co., 6-43; Traders' Nat. Bank v. Campbell, 6-353; Thomas Woods, 7-126; Wright B. King, 10-103.

### 84. ACTIONS.

Elfeit et al. v. Snow et al., 6-57; Central Bank, 6-207; Edward E. Kane v. Wm. Jenkinson, 10-316.

### 85. ASSIGNMENT FOR THE BENEFIT OF CREDITORS.

Wells, 1-171; Dunham & Orr, 2-17; Langley v. Perry, 2-596; Farrin v. Crawford et al., 2-602; Randall & Sutherland, 3-18; Goldschmidt, 3-165; Chamberlain & Chamberlain, 3-710.

### ARREST OF DEBTOR.

Davis, 3-339; Hunt, Tillinghast & Co. v. Pooke & Steere, 5-161; B. Cohn, 7-31.

### 86. FRAUDULENT CONVEYANCES.

Schick, 1-177; Drummond, 1-231;

Cowles, 1-280; Dunham & Orr, 2-17; Dean & Garrett, 2-89; Langley v. Perry, 2-596; Randall & Sutherland, 3-18; Goldschmidt, 3-165; Nickodemus, 3-230; Williams & Williams, 3-286; W. B. & J. F. Alexander, 4-178; Cornwall, 6-305; Eckfort & Petring v. Greely, 6-433; Sanford, 7-351; Munn, 7-468; Thornhill & Co. v. Link, 8-521.

### 87. ARREST.

Commonwealth v. O'Hara, 1-86; Henry Jacoby, 1-118; Geo. W. Kimball, 1-198; Chas. G. Patterson, 1-307; Wm. A. Walker, 1-318; Louis Glaser, 1-336; Devoe, 2-27; Hazleton, 2-31; Kimball, 2-204; Kimball, 2-354; Migel, 2-481; Davis, 3-339; Goodwin v. Sharkey, 3-558; Minon v. Van Nostrand et al., 4-108.

### 88. IMPRISONMENT.

Simpson, 2-47; Borst, 2-171; Cohn, 7-31.

### 89. INSOLVENCY.

Black v. Secor, 1-353; Craft, 1-378; Haughton, 1-460; Rogers & Coryell, 2-397; Morgan, Root & Co. v. Mastick, 2-521; Farron v. Crawford et al., 2-602; Doan v. Compton & Doan, 2-607; Diblee et al., 2-617; Randall v. Sutherland, 3-18;

make any payment, gift, grant, sale, conveyance, or transfer of money or other property, estate, rights, or credits, or confess judgment," or give any warrant to confess judgment, or procure his property to be taken on legal process, with intent to give a preference<sup>91</sup> to one or more of his creditors, or to any person or persons who are or may be liable for him as indorsers, bail, sureties, or otherwise, or with the intent, by such

disposition of his property, to defeat or delay the operation of this act ;<sup>92</sup>

Or who, being a bank," banker, broker, merchant, trader, manufacturer, or miner, has fraudulently stopped payment;<sup>93</sup>

Or who being a bank, banker, broker, merchant, trader, manufacturer," or miner," has stopped or suspended and not resumed payment, within a period of forty days, of his commercial paper" (made or passed

Miller v. Keys, 3-224; Williams & Co., 3-286; Wells, 3-371; Hardy et al. v. Clark & Bininger, 3-385; S. T. Smith, 3-377; Driggs v. Moore, Foote & Co., 3-602; Hardy, Blake & Co. v. Bininger & Co., 4-262; Curran et al. v. Munger et al., 6-33; Wilson v. City Bank, 9-97.

#### 90. CONFESSION OF JUDGMENT.

Asa W. Craft, 1-378; Wm. Leeds, 1-521; Sutherland, 1-531; Vogle v. Lathrop, 4-439; Golson et al. v. Neihoff et al., 5-56; Cook v. Waters et al., 9-155.

#### 91. INTENT TO PREFER.

Drummond, 1-231; Black & Secor, 1-353; Sutherland, 1-531; Rankin & Pullin v. Florida, Atlantic, and G. C. R. R. Co., 1-647; Dunham & Orr, 2-17; Morgan, Root & Co. v. Mastick, 2-521; Farrin v. Crawford et al., 2-602; Doan v. Compton & Doan, 2-607; Dibblee et al., 2-617; Miller v. Keys, 3-224; Wells, 3-371; Silverman, 4-523; Curran et al. v. Munger et al., 6-33; Merchants' Ins. Co., 6-43; Kenyon & Fenton, 6-238; Winter v. The Iowa, Minnetona & N. Pacific R. R. Co., 7-289; Knickerbocker Ins. Co. v. Comstock, 9-484.

#### 92. INTENT TO DEFEAT THE OPERATION OF THE BANKRUPT ACT.

Wells, 1-171; Schick, 1-177; Drummond, 1-231; Haughrey v. Albin, 2-399; Foster v. Hackley & Sons, 2-406; Langley v. Perry, 2-596; Randall & Sunderland, 3-18; Goldschmidt, 3-165; Kintzing, 3-217; Pierce & Holbrook, 3-258; Williams & Williams, 3-286; S. F. Smith, 3-378; Hardy et al. v. Clark & Bininger, 3-385; Spicer & Peckham v. Ward & Trow, 3-512; L. J. Doyle,

3-640; Hardy, Blake & Co. v. Bininger & Co., 4-262; Munger & Champlin, 4-295; Curran et al. v. Munger et al., 6-33; Winter v. The Iowa, Minnetona & North Pacific R. R. Co., 7-289; Christopher Weaver, 9-132.

#### 93. BANK.

Morgan et al. v. Thornhill et al., 5-1; Thornhill et al. & Williams v. Bank of Louisiana, 5-367; Warner et al., 5-414; Smith v. Manufacturers' National Bank, 9-122; Thomas Morrison, 10-105; The Sixpenny Savings Bank v. The Estate of the Stuyvesant Bank, 10-399.

#### 94. FRAUDULENT SUSPENSION.

Davis & Green v. Armstrong, 3-33; Thompson & McClellan, 3-184; Heinsheimer et al. v. Shea & Boyle, 3-187; Sohoo, 3-216.

#### 95. MANUFACTURERS.

Chandler, 4-213; Kenyon & Fenton, 6-238.

#### 96. STOPPAGE OF PAYMENT.

Thompson & McClellan, 3-184; Hollis, Kenny, et al., 3-309; Davis, 3-339; McNaughton, 8-44; Clemens, 8-279; Wilson, 8-396.

#### 97. COMMERCIAL PAPER.

Wells, 1-171; Cowles, 1-280; Jersey City Window Glass Co., 1-426; Leeds, 1-521; Cone & Morgan, 2-21; Ballard & Parsons, 2-250; Lowenstein, 2-306; Doan v. Compton & Doan, 2-607; Randall & Sunderland, 3-18; Weikert & Parker, 3-27; Davis & Green v. Armstrong, 3-34; McDermot Patent Bolt Manufacturing Co., 3-128; Thompson & McClallan, 3-185; Heinsheimer et al. v. Shea & Boyle, 3-187;

in the course of his business as such), or who, being a bank or banker, shall fail for forty days to pay any depositor upon demand of payment lawfully made,

Shall be deemed to have committed an "act of bankruptcy, and, subject to the conditions hereinafter prescribed, shall be adjudged a bankrupt" on the petition of one or more of his creditors,<sup>100</sup> who shall constitute one-fourth thereof, at least, in number, and the aggregate of whose debts provable under this act

amounts to at least one-third of the debts so provable:

*Provided:* That such petition is brought within six months after such act of bankruptcy shall have been committed.<sup>101</sup>

And the provisions of this section shall apply to all cases of compulsory or involuntary bankruptcy commenced since the first day of December, eighteen hundred and seventy-three, as well as to those commenced hereafter.

And in all cases commenced

Sohoo, 3-215; Nickodemus, 3-230; Orem, Son & Co. v. Harley, 3-263; Hollis, Kenny et al., 3-310; Davis, 8-339; Chandler, 4-213; Hardy, Blake & Co. v. Bining & Co., 4-262; Innes v. Carpenter, 4-412; Chappel, 4-540; McLean et al. v. Brown, Weber & Co., 4-585; Alabama and Chattanooga R. R. Co. v. Jones, 5-97; R. Stevens, 5-112; Massachusetts Brick Co., 5-408; Krueger et al., 5-439; M. & M. National Bank v. Brady's Bend Iron Co., 5-491; Baldwin et al. v. Wilder et al., 6-85; Kenyon & Fenton, 6-238; Carter, 6-299; Hercules Mutual Life Assurance Society, 6-338; B. Cohn, 7-31; Thomas Woods, 7-126; Ess & Clarendon, 7-133; Chas. S. Westcott et al., 7-285; Winter v. The Iowa, Minnetona & North Pacific R. R. Co., 7-289; Mendenhall v. Carter, 7-320; Mannheim, 7-342; Munn, 7-468; Jacob Raynor, 7-527; Moses A. McNaughton, 8-44; Clemens, 8-279; Wilson, 8-396; Edw. D. Pratt, 9-47; Christopher Weaver, 9-132; Staplin, 9-142; Moore et al. v. Walton et al., 9-402; P. Laner, 9-494.

#### 98. ACTS OF BANKRUPTCY.

Marshall Dunham & Joseph Orr, 2-17; Edmund P. Rogers & Miers Coryell, 2-397; Randall & Sunderland, 3-18; Weikert & Parker, 3-37; McDermott Bolt Co., 3-128; Goldschmidt, 3-164; Thompson & McCallan, 3-184; Williams & Williams, 3-286; Potter et al. v. James H. Coggeshall, trustee, 4-73; Valliquette, 4-307; Fox v. Eckstein, 4-373; Keefer, 4-389; Kenyon & Fenton, 6-238; Pratt, 6-276; Edward

Pratt, 9-47; Clemens, 9-57; Redmond & Martin, 9-408; Southern Minnesota R. R. Co., 10-86; Isaac Scull, 10-166; The Union Pacific R. R. Co., 10-178.

#### 99. INVOLUNTARY BANKRUPTCY.

Clark, 3-16; Evans, 3-261; Dillard, 9-8.

#### 100. PRACTICE UNDER THIS SECTION.

John M. Palmer, 1-213; Drummond, 1-231; Black & Secor, 1-353; Waite & Crocker, 1-373; Craft, 1-378; Haughton, 1-460; Crowley & Hoblitzell, 1-516; Sherburne, 1-558; Irving v. Hughes, 2-62; Randall & Sunderland, 3-18; Anonymous, 3-128; Orem, Son & Co. v. Harley, 3-263; Williams & Williams, 3-286; Muller & Brentano, 3-329; Bining & Co., 3-489; Camden Mill Rolling Co., 3-590; Moore & Brothers v. Harley, 4-242; Hardy, Blake & Co. v. Bining & Co., 4-262; Fogerty & Gerity, 4-451; May v. Harper & Atherton, 4-478; Leonard, 4-563; Watson, 4-613; Leighton, 5-95; Hunt, Tillinghast & Co. v. Pooke & Steere, 5-161; Ala. & Chat. R. R. Co., 6-107; D. C. Butterfield, 6-257; Jacob Raynor, 7-527; Moses A. McNaughton, 8-44; Daniel Sheehan, 8-345; Redmond & Martin, 9-408; Joliet Iron & Steel Co., 10-60; J. Young Scammon, 10-67; Jacob Raffauf, 10-69

#### 101. LIMITATION.

Martin, assignee, v. Smith et al., 4-275; Sedgwick, assignee, &c., v. Casey, 4-496; Thos. J. Hunt et al. v. David H. Taylor et al., 4-683; Smith v. Crawford, 9-38; Freeland & Gerson v. Holloman et al., 9-331; Daniel Cogdell v. Wm. J. Exum, 10-327.

since the first day of December, eighteen hundred and seventy-three, and prior to the passage of this act, as well as those commenced hereafter, the court shall, if such allegation as to the number or amount of petitioning creditors be denied by the debtor, by a statement in writing to that effect, require him to file in court forthwith a full list of his creditors, with their places of residence and the sums due them respectively, and shall ascertain, upon reasonable notice to the creditors, whether one-fourth in number and one-third in amount thereof, as aforesaid, have petitioned that the debtor be adjudged a bankrupt.

But if such debtor shall, on the filing of the petition, admit in writing that the requisite number and amount of creditors have petitioned; the court (if satisfied that the admission was made in good faith) shall so adjudge, which judgment shall be final, and the matter proceed without further steps on that subject.

And if it shall appear that such number and amount have not so petitioned, the court shall grant reasonable time, not exceeding, in cases heretofore commenced, twenty days, and, in cases hereafter commenced, ten days, within which other creditors may join in such petition.

And if, at the expiration of such time so limited, the number and amount shall comply with the re-

quirements of this section, the matter of bankruptcy may proceed;

But if, at the expiration of such limited time, such number and amount shall not answer the requirements of this section, the proceedings shall be dismissed, and, in cases hereafter commenced, with costs.

And if such person shall be adjudged a bankrupt, the assignee may recover back the money or property so paid, conveyed, sold, assigned, or transferred contrary to this act:<sup>102</sup>

*Provided*, That the person receiving such payment or conveyance had reasonable cause to believe that the debtor was insolvent,<sup>103</sup> and knew that a fraud on this act was intended;

And such person, if a creditor, shall not, in cases of actual fraud on his part, be allowed to prove for more than a moiety of his debt; and this limitation on the proof of debts shall apply to cases of voluntary as well as involuntary bankruptcy.

And the petition of creditors under this section may be sufficiently verified by the oaths of the first five signers thereof, if so many there be.

And if any of said first five signers shall not reside in the district in which such petition is to be filed, the same may be signed and verified by the oath or oaths of the attorney or attorneys, agent or agents, of such signers.

And in computing the number of creditors, as aforesaid, who shall join

#### 102. WHAT PREFERENCES ARE VOID.

Princeton, 1-618; Arnold, 2-160; Colman, 2-563; C. A. Davidson, 3-418; Phelps v. Sterns et al., 4-84; Tonkin & Trewartha, 4-52; Babbitt v. Walbrun & Co., 4-121; Bean v. Brookmire & Rankin, 4-196; Scott & McCarty, 4-414; J. J. & C. W. Walton,

4-467; Hubbard et al. v. The Allaire Works, 4-623; Collins v. Gray et al., 4-631; Bingham v. Richmond & Gibbs, 6-127; Bingham v. Frost et al., 6-130.

#### 103. KNOWLEDGE OF INSOLVENCY.

Curran et al. v. Munger et al., 6-33; R. S. Hamlin v. W. C. Pettibone, 10-173.

in such petition, creditors whose respective debts do not exceed two hundred and fifty dollars shall not be reckoned.

But if there be no creditors whose debts exceed said sum of two hundred and fifty dollars, or if the requisite number of creditors holding debts exceeding two hundred and fifty dollars fail to sign the petition, the creditors having debts of a less amount shall be reckoned for the

purpose aforesaid. <sup>104 105 106 107 108 109 110</sup>  
<sup>111 112</sup>

SEC. 5022.—Any act of bankruptcy committed since the second day of March, eighteen hundred and sixty-seven, may be the foundation of an adjudication of involuntary bankruptcy, upon a petition filed within the time prescribed by law, equally with one committed hereafter.

#### 104. PETITIONERS' DEBT.

W. H. Langley, 1-559; Schuyler, 2-549; Phelps v. A. B. & C. L. Clasen, 3-87; Avery v. Johann, 3-144; Sigsby v. Willis, 3-208; Williams & Williams, 3-286; Muller & Brentano, 3-329; C. A. Davidson, 3-418; Spicer & Peckham v. Ward & Trow, 3-518; Ouimette, 3-567; Linn et al. v. Smith, 4-47; Tonkin & Trewartha, 4-52; Melick, 4-97; W. B. Alexander, 4-178; Fox v. Eckstein, 4-373; Cornwall, 4-400; Collins v. Gray et al., 4-631; Skelly, 5-214; Massachusetts Brick Co., 5-408; Hunt & Hornell, 5-433; Rooney, 6-163; Stansell, 6-183; Cornwall, 6-305; Marcer, 6-351; J. H. Warner et al., 7-47; W. W. Francis & Buchanan, 7-359; Daniel Sheehan, 8-345; Thornhill & Co. v. Link, 8-521; Cox v. Hale, 8-562.

#### 105. PETITIONING CREDITOR.

Alex. R. Linn et al. v. Smith, 4-47; Olmsted, 4-240; Comstock et al., 9-88; Osage Val. & Southern Kansas R. R., 9-281; Joliet Iron & Steel Co., 10-60; Scammon, 10-67; Scull, 10-166; Wm. J. Pickering, 10-208; P. H. Heffron, 10-213; Keeler, 10-419; Jacob Hymes, 10-434.

#### 106. PRACTICE.

Randall & Sunderland, 3-18; Mitteldorfer & Co., 3-39; N. Y. Kerosene Co., 3-125; American Waterproof Cloth Co., 3-285; Wilkinson, 3-286; Sedgwick, assignee, v. Place et al., 3-302; Andrew J. Solis, 4-68; Wilson, assignee of Cummings, v. Stoddard, 4-254; Kahley et al., 4-378; Leonard, 4-563; Burkholder et al. v.

Stump, 4-597; The Troy Woolen Co., 4-629; Sutherland et al. v. Lake Superior Co., 9-299; Jelsh & Dunnebacke, 9-412; Joliet Iron & Steel Co., 10-60; Scammon, 10-66; J. Raffauf, 10-69; James M. Seabury, Jr., 10-90; Buchanan, 10-97; Thos. Morrison, 10-105; J. M. Hill, 10-183; Steinman, 10-214; Warren Savings Bank v. J. K. Palmer & Co., 10-239; Fendley, 10-251; Simmons, 10-254; O'Neil v. Dougherty, 10-294; Morris et al. v. Swartz, 10-305; Noonan, 10-330; Collins, 10-385; Upton v. Hasbrough, 10-368; Jacob Hymes, 10-433; Lloyd Brook, assignee, v. John McCracken, 10-461; Woolfolk et al. v. Danl. F. Gunn, 10-526; Nancy Wooddail, administratrix, v. Austin & Holliday, 10-545.

#### 107. BURDEN OF PROOF.

Brock v. Hoppock, 2-7; O'Kell, 2-105; Ballard & Parsons, 2-250; Miller v. Keys, 3-225; Wilson, assignee of Cummings, v. Stoddard, 4-254; Mays et al., assign. of Born, v. The Manufacturers' Nat. Bank of Philadelphia, 4-660; Price & Miller, 8-514; Walbrun et al. v. Babbitt, 9-1; Dwight B. King, 10-103; Scull, 10-165; Jacob Hymes, 10-433.

#### 108. CONGRESS.

Smith, 8-401.

#### 109. NATIONAL BANKS.

Ocean Nat. Bank v. Wild, 10-568.

#### 110. RAILWAYS.

Adams v. Boston, Hartford & Erie R. R. Co., 4-314; Winter v. The Iowa, Minnetona & North Pacific Railway Co., 7-289.

#### 111. VOLUNTARY APPEARANCE.

Smith v. Mason, 6-1.



**SEC. 5023.**—This section of the Revised Statutes authorized an adjudication to be made on the petition of one or more creditors, the aggregate of whose debts exceeded the sum of two hundred and fifty dollars, and was repealed by the 12th section of the Act of June 22, 1874.—See Section 5021.

**SEC. 5024.**—Upon the filing of the petition authorized by the preceding section, if it appears that sufficient grounds<sup>112</sup> exist therefor, the court shall direct the entry of an order requiring the debtor to appear and show cause,<sup>113</sup> at a court of Bankruptcy to be holden at a time to be specified in the order, not less than five days from the service thereof, why the prayer of the petition should not be granted.

The court may also, by injunction,<sup>114</sup> restrain<sup>115</sup> the debtor, and any other person, in the mean time, from making any transfer or disposition of any part of the debtor's property not excepted by this title

from the operation thereof, and from any interference therewith ;

And if it shall appear that there is probable cause for believing that the debtor is about to leave the district, or to remove or conceal his goods and chattels or his evidence of property, or to make any fraudulent conveyance or disposition thereof; the court may issue a warrant<sup>116</sup> to the marshal of the district, commanding him to arrest and safely keep the alleged debtor, unless he shall give bail to the satisfaction of the court for his appearance from time to time, as required by the court, until its decision upon the petition, or until its further order, and forthwith to take possession provisionally of all the property and effects of the debtor, and safely keep the same until the further order of the court.

**SEC. 5025.**—A copy of the petition and order to show cause shall be served on the debtor<sup>117</sup> by delivering the same to him personally, or leaving the same at his last or usual

#### 112. SUFFICIENT GROUNDS.

Bromley & Co., 3-686; Leonard, 4-563; Ala. & Chat. R. R. Co. v. Jones, 7-145; Price & Miller, 8-514.

#### 113. ORDER TO SHOW CAUSE.

Stuart, assig., v. Hines et al., 6-416; McNaughton, 8-44; Marshall v. Knox et al., 8-97; Sherry, 8-142; Hawkeye Smelting Co., 8-385; Daggett, 8-432.

#### 114. INJUNCTION.

Metzler et al., 1-38; Campbell, 1-165; Irving v. Hughes, 2-62; Dean & Garrett, 2-89; Kintzing, 3-217; Creditors v. Cozens & Hall, 3-281; Muller & Brentano, 3-329; Fuller, 4-115; Bloss, 4-147; Feeney, 4-233; Carr v. Whitaker, 5-123; Moses, 6-181; Lady Bryan Mining Co., 6-252; J. P. Hayden, 7-192.

#### 115. RESTRAINING SUIT.

Wilbur, 3-276; Sampson v. Burton et al., 4-1; Ghiradelli, 4-164; Markson & Spaulding, assig., v. Heaney, 4-510.

#### IN STATE COURT.

Minor v. Van Nostrand et al., 4-108; Fuller, 4-115; Penn et al., 8-93.

#### 116. PROVISIONAL WARRANT.

Marks, 2-575; Muller & Brentano, 3-329; Briggs, 3-638; Harthill, 4-392; M. & M. Nat. Bank v. Brady's Bend Iron Co., 5-491; Daniel Sheehan, 8-345.

#### 117. SERVICE OF DEBTOR.

Washington Mar. Ins. Co., 2-648; Muller & Brentano, 3-329; Ala. & Chat. R. R. Co. v. Jones, 5-97; Stuart v. Hines et al., 6-416; Platt v. Archer, 6-465.

place of abode; <sup>118</sup> or, if the debtor cannot be found, and his place of residence cannot be ascertained, service shall be made by publication in such manner as the judge may direct.

No further proceedings, unless the debtor appears <sup>119</sup> and consents thereto, shall be had until proof has been given, to the satisfaction of the court, of such service or publication; and if such proof is not given, on the return day of such order, the proceedings shall be adjourned, <sup>120</sup> and an order made that the notice be forthwith so served or published.

And if, on the return day of the order to show cause as aforesaid, the court shall be satisfied that the requirement of section 5021 of said act as to the number and amount of petitioning creditors has been complied with, or if, within the time

provided for in section 5021 of this act, creditors sufficient in number and amount <sup>121</sup> shall sign such petition so as to make a total of one-fourth in number of the creditors and one-third in the amount of the provable debts against the bankrupt, as provided in said section, the court shall so adjudge, which judgment shall be final; otherwise it shall dismiss the proceedings, and, in cases hereafter commenced, with costs.

SEC. 5026.—On such return day or adjourned day, if the notice has been duly served or published, or is waived by the appearance and consent of the debtor, <sup>122</sup> the court shall proceed summarily to hear the allegations of the petitioner and debtor, and may adjourn the proceedings from time to time, on good cause shown, and shall,

#### 118. SERVING SUBPOENA.

Jobbins v. Montague et al., 6-117.

#### 119. APPEARANCE.

Ulrich, 3-133; Jas. M. Seabury, Jr., 10-90.

#### 120. ADJOURNMENT.

George S. Mawson, 1-271; John Thompson, 1-323; Isaac Seckendorf, 1-626; Schepeler et al., 3-170; James M. Seabury, Jr., 10-90; Wm. Buchanan, 10-97.

#### 121. REQUISITE NUMBER.

Joliet Iron & Steel Co. 10-60; J. Young Scammon, 10-66; Isaac Scull, 10-166.

#### 122. APPEARANCE AND PLEADING.

Wells et al., 1-171; Waite & Crocker, 1-373; Moore, ex parte Nat. Ex. Bank of Columbus, 1-470; Sutherland, 1-531; Brock v. Hoppock, 2-7; Dunham & Orr, 2-17; Haley, 2-35; Schlichter et al., 2-336; Doan v. Compton & Doan, 2-607; Randall & Sunderland, 3-18; Phelps v. Classen, 3-87; R. Stewart, 3-108; Nickodemus, 3-230; Orem & Son v. Harley, 3-263; Gebhardt,

3-268; S. F. Smith, 3-377; Hardy v. Clark et al., 3-385; Ouimette, 3-566; Melick, 4-97; Hardy et al. v. Bininget et al., 4-262; Fogerty & Gerity, 4-451; Silverman, 4-523; Leonard, 4-563; Hunt et al. v. Pooke et al., 5-161; Skelly, 5-214; Boston R. R. Co., 5-232; Curran v. Munger, 6-33; Rooney, 6-163; Bush, 6-179; Boston R. R. Co., 6-209, 222; Kenyon & Fenton, 6-238; Cornwall, 6-305; Platt v. Archer, 6-465; Nounnan & Co., 6-579; Thomas Woods, 7-126; Safe D. and S. Inst., 7-392; Munn, 7-468; J. Neilson, 7-505; B. F. Jones, 7-506; Francis J. Bieler, 7-552; Moses A. McNaughton, 8-44; A. Benham, 8-94; Walter S. Derby, 8-106; Sherry, 8-142; Knickerbocker Ins. Co. v. Comstock, 8-145; Heydette, 8-333; Daniel Sheehan, 8-353; Rachel Goodman, 8-380; Hawkeye Smelting Co., 8-385; Price & Miller, 8-514; Alexander Findlay, 9-83; Leiter v. Payson, 9-205; R. S. DeForest, 9-278; Osage V. & S. R. R. Co., 9-281; Mendenhall, 9-285; Redmond & Martin, 9-408; Jelsh & Dunneback, 9-412; Dunn et al., 9-487; Alonzo Murphy, 10-48; Wm. Buchanan, 10-97; Joseph M. Hill, 10-183; Isaac Scull, 10-166.



if the debtor on the same day so demands in writing, order a trial by jury at the first term of the court at which a jury shall be in attendance, to ascertain the fact of the alleged bankruptcy.

Or, at the election of the debtor, the court may, in its discretion, award a *venire facias* to the marshal of the district, returnable within ten days before him, for the trial of the facts set forth in the petition, at which time the trial shall be had unless adjourned for cause.

And unless, upon such hearing or trial, it shall appear to the satisfaction of said court, or of the jury, as the case may be, that the facts set forth in said petition are true, or if it shall appear that the debtor has paid and satisfied all liens upon his property, in case the existence of such liens was the sole ground of the proceeding, the proceeding shall be dismissed,<sup>123</sup> and the respondent shall recover costs ;

And all proceedings in bankruptcy may be discontinued on reasonable notice and hearing, with the approval of the court, and upon the assent, in

writing, of such debtor, and not less than one-half of his creditors in number and amount ;<sup>124</sup>

Or, in case all the creditors and such debtor assent thereto, such discontinuance shall be ordered and entered ;

And all parties shall be remitted, in either case, to the same rights and duties existing at the date of the filing of the petition for bankruptcy, except so far as such estate shall have been already administered and disposed of.

And the court shall have power to make all needful orders and decrees to carry the foregoing provision into effect.

If the petitioning creditor does not appear and proceed on the return day, or adjourned day, the court may, upon the petition of any other creditor to the required amount,<sup>125</sup> proceed to adjudicate on such petition, without requiring a new service or publication of notice to the debtor.

SEC. 5027.—The provisions of this section are incorporated in Section

#### 123. DISMISSAL PROCEEDINGS.

Benjamin W. Hatcher, 1-390 ; Wm. D. Miller, 1-410 ; Sherburne, 1-558 ; Hirsch, 2-3 ; Samuel Lowenstein & Rosa Lowenstein, 2-306 ; Camden Rolling Mill Co., 3-590 ; Karr v. Whittaker et al., 5-123 ; Hunt, Tillinghast & Co. v. Pooke & Steere, 5-161 ; Sweatt v. Boston, Hartford & Erie R. R. Co., 5-235 ; Warner et al., 7-47 ; Jaycox & Green, 7-140 ; Sanford, 7-352 ; Indianapolis, Cincinnati and Lafayette R. R. Co., 8-302 ; Sheehan, 8-353 ; Mendenhall, 9-380 ; Murphy, 10-48 ; P. H. Heffron, 10-213 ; Cole v. Roach, 10-288.

#### 124. DISCONTINUANCE OF BANKRUPTCY PROCEEDINGS.

Bieler, 7-552.

#### 125. PROCEEDINGS BY OTHER CREDITORS.

Camden Rolling Mill Co., 3-590 ; Olmsted, 4-240 ; Mendenhall, 9-380 ; Knickerbocker Ins. Co. v. Comstock, 9-484 ; Richard J. Mendenhall, 9-497 ; William Buchanan, 10-97.

#### 126. INTERVENTION.

Wm. Buchanan, 10-97 ; S. S. Houghton, 10-337.

#### INTERVENOR.

J. P. Morris et al. v. H. Swartz, 10-305.

#### 127. INTERPRETATION.

Nounnan & Co., 7-15 ; Goodall v. Tuttle, 7-193 ; Pittock, 8-78.

5026. As found in the Revised Statutes, it contained the twelve lines commencing, "And unless upon such hearing."—EDITOR.

SEC. 5028.—If upon the hearing or trial the facts set forth in the petition are found to be true, or if upon default<sup>128</sup> made by the debtor to appear pursuant to the order, due proof of service thereof is made, the court shall adjudge the debtor to be a bankrupt, and shall forthwith issue a warrant<sup>129</sup> to take possession of his estate.

SEC. 5029.—The warrant shall be directed, and the property of the debtor shall be taken thereon,<sup>130</sup> and shall be assigned and distributed in the same manner and with similar proceedings to those hereinbefore provided for the taking possession, assignment, and distribution of the property of the debtor, upon his own petition.

#### 128. DEFAULT.

Neilson, 7-505.

#### 129. ISSUE OF WARRANT.

Howes & Macy, 9-423.

#### 130. SURRENDER TO REGISTER NOT PERMITTED.

Howes & Macy, 9-423.

SEC. 5030.—The order of adjudication of bankruptcy shall require the bankrupt forthwith, or within such number of days, not exceeding five, after the date of the order or notice thereof, as shall by the order be prescribed, to make and deliver, or transmit by mail, post-paid, to the messenger, a schedule of the creditors and an inventory and valuation of his estate in the form and verified in the manner required of a petitioning debtor.

SEC. 5031.—If the debtor has failed to appear in person or by attorney,<sup>131</sup> a certified copy of the adjudication shall be forthwith served on him by delivery or publication in the manner hereinbefore provided for the service of the order to show cause; and if the bankrupt is absent or cannot be found, such schedule and inventory shall be prepared by the messenger and the assignee from the best information they can obtain.

#### 131. ATTORNEY.

Samuel M. Levy v. Mark Levy, 1-184; Louisa Heirschberg, 1-642; O'Donohue, 8-245; Ala. and Chat. R. R. Co. v. Jones, 5-97; Leiter v. Payson, 9-205; Watson v. City Sav. Bank, 9-458; Wm. C. Christley, 10-268; South Side R. R. Co., 10-274; Jas. S. Aspinwall, 10-448.

## CHAPTER IV.

### PROCEEDINGS TO REALIZE THE ESTATE FOR CREDITORS.

SEC. 5032.—CONTENTS OF NOTICE TO CREDITORS.

SEC. 5033.—MARSHAL'S RETURN.

SEC. 5034.—CHOICE OF ASSIGNEE.

SEC. 5035.—WHO ARE DISQUALIFIED.

SEC. 5036.—BOND OF ASSIGNEE.

- SEC. 5037.—ASSIGNEE LIABLE FOR CONTEMPT.  
SEC. 5038.—RESIGNATION OF THE TRUST.  
SEC. 5039.—REMOVAL OF ASSIGNEE.  
SEC. 5040.—EFFECT OF RESIGNATION OR REMOVAL  
SEC. 5041.—FILLING VACANCIES.  
SEC. 5042.—VESTING ESTATE IN REMAINING ASSIGNEE.  
SEC. 5043.—FORMER ASSIGNEE TO EXECUTE INSTRUMENTS.  
SEC. 5044.—ASSIGNMENT.  
SEC. 5045.—EXEMPTIONS.  
SEC. 5046.—WHAT PROPERTY VESTS IN ASSIGNEE.  
SEC. 5047.—RIGHT OF ACTION OF ASSIGNEE.  
SEC. 5048.—NO ABATEMENT BY DEATH OR REMOVAL.  
SEC. 5049.—COPY OF ASSIGNMENT CONCLUSIVE EVIDENCE OF TITLE.  
SEC. 5050.—BANKRUPT'S BOOKS OF ACCOUNT.  
SEC. 5051.—DEBTOR MUST EXECUTE INSTRUMENTS.  
SEC. 5052.—CHATTEL MORTGAGES.  
SEC. 5053.—TRUST PROPERTY.  
SEC. 5054.—NOTICE OF APPOINTMENT OF ASSIGNEE AND RECORD OF ASSIGN-  
MENT.  
SEC. 5055.—ASSIGNEE TO DEMAND AND RECEIVE ALL ASSIGNED ESTATE.  
SEC. 5056.—NOTICE PRIOR TO SUIT AGAINST ASSIGNEE.  
SEC. 5057.—TIME OF COMMENCING SUITS.  
SEC. 5058.—ASSIGNEE'S ACCOUNTS OF MONEY RECEIVED.  
SEC. 5059.—ASSIGNEE TO KEEP MONEY AND GOODS SEPARATE.  
SEC. 5060.—TEMPORARY INVESTMENT OF MONEY.  
SEC. 5061.—ARBITRATION.  
SEC. 5062.—ASSIGNEE TO SELL PROPERTY.  
SEC. 5062.—(A) CONTINUANCE OF THE BUSINESS.  
SEC. 5062.—(B) MODE OF SELLING.  
SEC. 5063.—SALE OF DISPUTED PROPERTY.  
SEC. 5064.—SALE OF UNCOLLECTABLE ASSETS.  
SEC. 5065.—SALE OF PERISHABLE PROPERTY.  
SEC. 5066.—DISCHARGE OF LIENS.  
SEC. 5067.—PROVABLE DEBTS.  
SEC. 5068.—CONTINGENT DEBTS.  
SEC. 5069.—LIABILITY OF BANKRUPT AS SURETY.  
SEC. 5070.—SURETIES FOR BANKRUPT.  
SEC. 5071.—DEBTS FALLING DUE AT STATED PERIODS.  
SEC. 5072.—NO OTHER DEBTS PROVABLE.  
SEC. 5073.—SET-OFF.  
SEC. 5074.—DISTINCT LIABILITIES.  
SEC. 5075.—SECURED DEBTS.  
SEC. 5076.—PROOF OF DEBT.  
SEC. 5077.—CREDITOR'S OATH.  
SEC. 5078.—BY WHOM OATH MAY BE MADE.  
SEC. 5079.—OATH—BEFORE WHOM MADE: PROOF TO BE SENT TO REGISTER.  
SEC. 5080.—EXAMINATION—PROOF SENT TO ASSIGNEE.  
SEC. 5081.—EXAMINATION BY COURT INTO PROOF OF CLAIMS.  
SEC. 5082.—WITHDRAWAL OF PAPERS.  
SEC. 5083.—POSTPONEMENT OF PROOF.  
SEC. 5084.—SURRENDER OF PREFERENCES.  
SEC. 5085.—ALLOWANCE AND LIST OF DEBTS.  
SEC. 5086.—EXAMINATION OF BANKRUPT.  
SEC. 5086.—(A) PARTIES MAY BE WITNESSES.

- SEC. 5087.—EXAMINATION OF WITNESS.  
 SEC. 5088.—EXAMINATION OF BANKRUPT'S WIFE.  
 SEC. 5089.—EXAMINATION OF IMPRISONED OR DISABLED BANKRUPT.  
 SEC. 5090.—NO ABATEMENT UPON DEATH OF DEBTOR.  
 SEC. 5091.—DISTRIBUTION OF BANKRUPT'S ESTATE.  
 SEC. 5092.—SECOND MEETING OF CREDITORS.  
 SEC. 5093.—THIRD MEETING OF CREDITORS.  
 SEC. 5094.—NOTICE OF MEETINGS.  
 SEC. 5095.—CREDITOR MAY ACT BY ATTORNEY.  
 SEC. 5096.—SETTLEMENT OF ASSIGNEE'S ACCOUNT.  
 SEC. 5097.—DIVIDEND NOT TO BE DISTURBED.  
 SEC. 5098.—OMISSION OF ASSIGNEE TO CALL MEETINGS.  
 SEC. 5099.—COMPENSATION OF ASSIGNEE.  
 SEC. 5100.—COMMISSIONS.  
 SEC. 5101.—DEBTS ENTITLED TO PRIORITY.  
 SEC. 5102.—NOTICE OF DIVIDEND TO EACH CREDITOR.  
 SEC. 5103.—SETTLEMENT OF BANKRUPT ESTATE BY TRUSTEES.  
 SEC. 5103.—(A) COMPOSITION.

SEC. 5032.—The notice<sup>132</sup> to creditors under warrant, shall state:

*First.* That a warrant in bankruptcy has been issued against the estate of the debtor.

*Second.* That the payment of any debts and the delivery of any property belonging to such debtor, to him or for his use, and the transfer of any property by him, are forbidden by law.

*Third.* That a meeting of the creditors of the debtor, giving the names, residences and amounts, so far as known, to prove their debts and choose one or more assignees of his estate, will be held at a Court of Bankruptcy, to be holden at a time and place designated in the warrant, not less than ten nor more than

ninety days after the issuing of the same.

SEC. 5033.—At the meeting held in pursuance of the notice, one of the Registers of the court shall preside, and the messenger shall make return<sup>133</sup> of the warrant and of his doings thereon; and if it appears that the notice to the creditors has not been given as required in the warrant, the meeting shall forthwith be adjourned, and a new notice given as required.

SEC. 5034.—The creditors shall, at the first meeting held after due notice from the messenger, in presence of a Register designated by the court, choose<sup>134</sup> one or more assignees of the

#### 132. NOTICE OF FIRST MEETING.

Heys, 1-21; Perry, 1-220; Ratcliffe, 1-400; Morgenthal, 1-402; Hall, 2-192.

#### 133. RETURN OF WARRANT.

W. D. Hill, 1-16; Devlin et al., 1-35; Pulver, 1-46; Anon., 1-123; Hall, 2-192; Schepeler et al., 3-170.

#### 134. CHOICE OF ASSIGNEE.

W. D. Hill, 1-16; Knoepfel, 1-23; Altenhain, 1-85; Davis & Son, 1-120; Purvis, 1-163; Perry, 1-220; J. O. Smith, 1-243; Bolton, 1-370; Ratcliffe, 1-400; Morgenthal, 1-402; Cram, 1-504; Phelps, Caldwell & Co., 1-525; Jones, 2-59; Brisco, 2-226; Haynes, 2-227; Pearson, 2-477;

estate of the debtor; the choice to be made by the greater part in value and in number of the creditors who have proved their debts. If no choice is made by the creditors at the meeting, the judge, or, if there be no opposing interest, the Register, shall appoint<sup>135</sup> one or more assignees. If an assignee, so chosen or appointed, fails within five days to express in writing his acceptance of the trust, the judge or Register may fill the vacancy. All elections or appointments of assignees shall be subject to the approval<sup>136</sup> of the judge; and when, in his judgment, it is for any cause needful or expedient, he may appoint additional assignees, or order a new election.

SEC. 5035.—No person who has received any preference contrary to the provisions of this title shall vote for or be eligible as assignee;<sup>137</sup> but no title to property, real or personal, sold, transferred, or conveyed by an assignee, shall be affected or impaired by reason of his ineligibility.

SEC. 5036.—The District Judge at

---

Scheiffer & Garrett, 2-591; Noble, 8-96; High et al., 3-192; Hermann et al., 3-618; Stevens, 4-367; Frank, 5-194; Carson, 5-290; C. H. Norton, 6-297; J. R. Stillwell, 7-226; Jaycox & Green, 7-303; Lake Superior C. R. and I. Co., 7-376; S. Hanna, 7-502; Pfromm, 8-357; Bartusch, 9-478; J. F. & C. R. Parkes, 10-82.

#### 135. APPOINTMENT OF ASSIGNEE.

Cogswell, 1-62; Anon., 1-123; Pearson, 2-477; Stuyvesant Bank, 6-272; C. H. Norton, 6-297.

#### 136. APPROVAL BY THE JUDGE.

Bliss, 1-78; J. O. Smith, 1-243; Clair-

any time may, and upon the request in writing of any creditor who has proved his claim shall, require the assignee to give good and sufficient bond<sup>138</sup> to the United States, with a condition for the faithful performance and discharge of his duties; the bond shall be approved by the judge or Register by his indorsement thereon, shall be filed with the record of the case, and inure to the benefit of all creditors proving their claims, and may be prosecuted in the name and for the benefit of any injured party. If the assignee fails to give the bond within such time as the judge or Register orders, not exceeding ten days after notice to him of such order, the judge shall remove him, and appoint another in his place.

SEC. 5037.—Any assignee who refuses or unreasonably neglects to execute an instrument<sup>139</sup> when lawfully required by the court, or disobeys a lawful order or decree of the court in the premises, may be punished as for a contempt of court.

---

mont, 1-276; Havens, 1-485; Powell, 2-45; Grant, 2-106; Doe, 2-308; Lawson, 2-396; Loder et al., 2-515; Barrett, 2-533; Scheiffer & Garrett, 2-591; Bogert v. Oakley, 3-651; Mallory, 4-153; Boston, Hartford and Erie R. R. Co., 5-233; Overton, 5-366; Haas & Samson, 8-189; Pfromm, 8-357.

#### 137. WHO INELIGIBLE.

Powell, 2-45; Barrett, 2-533.

#### 138. BOND REQUIRED.

Dean, 1-249; Fernberg, 2-353; McFaden, 3-104; Bininger & Clark, 9-568.

#### 139. LIST OF CREDITORS.

Blaisdell et al., 6-78.

SEC. 5038.—An assignee may, with the consent of the judge, resign his trust, and be discharged therefrom.

SEC. 5039.—The court, after due notice and hearing, may remove an assignee for any cause which, in its judgment, renders such removal necessary or expedient.<sup>140</sup> At a meeting called for the purpose by order of the court in its discretion, or called upon the application of a majority of the creditors in number and value, the creditors may, with consent of the court, remove any assignee by such a vote as is provided for the choice of assignee.

SEC. 5040.—The resignation or removal of an assignee shall in no way release him from performing all things requisite on his part for the proper closing up of his trust and the transmission thereof to his successors, nor shall it affect the liability of the principal or surety on the bond given by the assignee.

SEC. 5041.—Vacancies caused by death or otherwise in the office of assignee may be filled by appointment of the court, or at its discretion by an election by the creditors, in the same manner as in the original choice of an assignee,<sup>141</sup> at a regular meeting, or at a meeting called for

the purpose, with such notice thereof in writing to all known creditors, and by such person as the court shall direct.

SEC. 5042.—When, by death or otherwise, the number of assignees is reduced, the estate of the debtor not lawfully disposed of shall vest in the remaining assignee or assignees, and the persons selected to fill vacancies, if any, with the same powers and duties relative thereto as if they were originally chosen.

SEC. 5043.—Any former assignee, his executors or administrators, upon request, and at the expense of the estate, shall make and execute to the new assignee all deeds, conveyances, and assurances, and do all other lawful acts requisite to enable him to recover and receive all the estate. And the court may make all orders which it may deem expedient to secure the proper fulfillment of the duties of any former assignee, and the rights and interests of all persons interested in the estate.

SEC. 5044.—As soon as an assignee is appointed and qualified, the judge, or, where there is no opposing interest, the Register, shall, by an instrument under his hand, assign<sup>142</sup> and convey to the assignee all the

#### 140. REMOVAL OF ASSIGNEE.

Perry, 1-220; Ratcliffe, 1-400; Stokes, 1-489; Price, 4-406; Dewey, 4-412; Blodgett & Sanford, 5-472; Sacchi, 6-398; Morse, 7-56; Wood et al. v. Buckewell et al., 7-405; Perkins, 8-56.

#### 141. POWER NOT EXERCISABLE BEFORE FIRST ELECTION.

Scheiffer & Garrett, 2-591.

#### 142. ASSIGNMENT.

Wm. H. Langley, 1-559; George H. Arledge, 1-644; John Sedgwick v. James K. Place et al., 1-673; Wylie, 2-137; Geo. A. Hawkins et al., 2-378; Edward Meyer, 2-422; Scheiffer & Garrett, 2-591; Farron v. Crawford et al., 2-602; Randall & Sunderland, 3-18; Rosenberg, 3-130; Goldschmidt, 3-164; Neale, 3-177; Kintzing, 3-217; Broome, 3-444; Charles H. Wynne,



estate, real and personal, of the bankrupt, with all his deeds, books, and papers relating thereto, and such assignment shall relate back to the commencement of the proceedings in bankruptcy, and by operation of law shall vest<sup>143</sup> the title to all such property and estate, both real and personal, in the assignee, although the same is then attached on mesne process as the property of the debtor, and shall dissolve any such attachment<sup>144</sup> made within four months

next preceding the commencement of the bankruptcy proceedings.

SEC. 5045.—There shall be excepted from the operation of the conveyance the necessary household and kitchen furniture, and such other articles and necessities of the bankrupt as the assignee shall designate and set apart, having reference in the amount to the family, condition, and circumstances of the bank-

4-23; Starkweather, assignee of Wells, v. The Cleveland Ins. Co., 4-341; Burkholder et al. v. Stump, 4-597; Wright v. Johnson, 4-627; Mays v. Manufacturers' Nat. Bank of Phila., 4-660; Bush, 6-179; North, assig., v. House et al., 6-365; Eckfort & Petring v. Greely, 6-433; Lenihan v. Haman et al., 8-557; Laner, 9-494; Pier-son, 10-107; Union Pacific R. R. Co., 10-178; Daniel F. Meader et al. v. R. D. Everett, assignee of L. H. Clarke, 10-421; Sutherland v. Davis, 10-424.

#### 143. PROPERTY VESTED IN ASSIGNEE.

Patterson, 1-125; Levy et al., 1-136; Bradshaw v. Klein, 1-146; Rosenfield, Jr., 1-319; Metzger, 2-355; Foster v. Hackley & Sons, 2-406; Hussman, 2-437; Ham-bright, 2-498; Beal, 2-587; Brock v. Ter-rel, 3-643; J. H. Morrow, 2-665; Rock-ford, Rock Island and St. L. R. R. Co., ex parte McKay & Aldus, 3-50; Hinds et al., 3-351; Gregg, 3-529; Ungewitter v. Von Sachs, 3-723; Griffiths, 3-731; Wynne, 4-23; Potter et al. v. Coggeshall, 4-73; Al-len & Massey et al., 4-248; Starkweather v. Cleveland Ins. Co., 4-341; Jones, 4-347; Mays v. Manuf. Nat. Bank, 4-446; Darby's Trustees v. Boatman's S. I., 4-601; Brom-bey v. Smith, 5-152; Boyd, 5-199; Harvey v. Crane, 5-218; Sawyer et al. v. Turpin et al., 5-339; Dow, 6-10; Pusey, 6-40; J. J. Lake, 6-542; Edmondson v. Hyde, 7-1; Babbitt v. Burgess, 7-561; J. H. Lyon,

7-182; McKay & Aldus, 7-230; Perrin et al., 7-283; Bean v. Brookmire & Rankin, 7-568; Jaycox & Green, 7-578; Owen & Murrin, 8-6; Bean v. Amsink, 8-228; Schumpert, 8-415; Purviance & Union National Bank, 8-447; Michael O'Dowd, 8-451; Miller v. O'Brien, 9-26; Kansas City Manufacturing Co., 9-76; Sawyer v. Hoag, 9-145; Cook & Waters, 9-155; Bank of Madison, 9-184; George W. Anderson, 9-360; Wood M. & R. Co. v. Brooks, 9-395; Cook et al. v. Tullis, 9-433; Fourth Nat. Bank v. City Nat. Bank, 10-44.

#### 144. DISSOLUTION OF ATTACHMENTS.

Comer v. Miller et al., 1-403; Ellis, 1-555; Pennington v. Lowenstein, 1-570; Houseberger et al., 2-92; Williams, 2-229; Fortune, 2-662; Brand, 3-324; Joslyn et al., 3-473; Bates v. Tappan, 3-647; Samson v. Burton et al., 4-1; Bowman v. Harding, 4-20; Beers et al. v. Place & Co., 4-459; Leighton v. Kelsey et al., 4-471; Williams v. Merritt, 4-706; W. S. Stevens, 5-298; Samson v. Clark & Burton, 6-403; C. H. Preston, 6-545; Gardner v. Cook, 7-346; Marshall v. Knox et al., 8-97; Zeiber & Hill, 8-239; Archenbrowne, 8-429; Johnson v. Bishop, 8-533; Miller v. O'Brien, 9-26; Stoddard v. Locke et al., 9-71; George S. Ward, 9-349; Appleton v. Bowles, 9-354; Holyoke v. Adams, 10-270; Miller v. Bowles, 10-515; Kent & Co. v. L. T. Downing, assignee, 10-538.



rupt, but altogether not to exceed in value, in any case, the sum of five hundred dollars; also the wearing apparel of the bankrupt, and that of his wife and children, and the uniform, arms, and equipments of any person who is or has been a soldier in the militia or in the service of the United States;<sup>146</sup> and such other property as now is, or hereafter shall be, exempted from attachment, or seizure, or levy on execution by the laws of the United States,<sup>146</sup> and such other property not included in the foregoing exceptions as is exempted from levy and sale upon execution or other process or order of any court by the laws of the State in which the bankrupt has his domicile at the time of the commencement of the proceedings in bankruptcy, to an amount allowed

by the constitution and laws of each State,<sup>147</sup> as existing in the year eighteen hundred and seventy-one; and such exemptions shall be valid against debts contracted before the adoption and passage of such State constitution and laws, as well as those contracted after the same, and against liens by judgment or decree of any State court, any decision of any such court rendered since the adoption and passage of such constitution and laws to the contrary notwithstanding. These exceptions shall operate as a limitation upon the conveyance of the property of the bankrupt to his assignee; and in no case shall the property hereby excepted pass to the assignee, or the title of the bankrupt thereto be impaired or affected by any of the provisions of this title; and the determination of the assignee

#### 145. EXEMPTIONS.

Ruth, 1-154; Hafer, 1-547; Ellis, 1-555; Noakes, 1-592; Perdue, 2-183; Griffin, 2-254; Lambert, 2-426; Hambright, 2-498; Whitehead, 2-599; Feely, 3-66; Hutto, 3-787; Brown, 3-250; Young et al., 3-440; Keating v. Keefer, 5-133; Hester, 5-285; W. S. Stevens, 5-298; Welch, 5-348; Cox v. Wilder, 5-443; C. Hunt, 5-493; C. H. Preston, 6-545; Edmondson & Hyde, 7-1; Bartholomew v. West, 8-12; Kean et al., 8-367; Dillard, 9-8; Jared Everitt, 9-90; Parks, 9-270; Deckert, 10-1; Solomon, 10-9; Blodgett & Sandford, 10-145; Maxwell v. McCune et al., 10-307; Willis A. Jordan, 10-427.

#### 146. BY BANKRUPT ACT.

Ruth, 1-154; Cobb, 1-414; Noakes, 1-592; Appold, 1-621; Lawson, 2-54; Thornton, 2-189; Feely, 3-66; Brown, 3-250; Welch, 5-348; Ira Hay, 7-344; E.

A. Vogle, 8-132; McKercher & Pettigrew, 8-409.

#### 147. UNDER STATE LAWS.

Ruth, 1-154; Cobb, 1-414; Appold, 1-621; Lawson, 2-54; Farish, 2-168; Bennet & Erben, 2-181; Jackson & Pearce, 2-508; Gainey, 2-522; Henkel, 2-546; McLean, 2-567; Watson, 2-570; Whitehead, 2-599; Kelly v. Strange, 3-8; Feely, 3-66; Summers, 3-84; Taylor, 3-158; Brown, 3-250; Young et al., 3-440; Askew, 3-575; Hutto, 3-787; Rupp, 4-95; Beckerford, 4-204; Schwartz, 4-588; W. S. Stevens, 5-298; J. S. & J. Price, 6-400; Haake, 7-61; Bartholomew v. West, 8-12; E. A. Vogle, 8-132; Jordan, 8-180; Moseley, Wells & Co., 8-208; Kean et al., 8-367; John W. Smith, 8-401; McKircher & Pettigrew, 8-409; Geo. C. Wright, 8-430; Geo. W. Dillard, 9-8; Jared Everitt, 9-90; J. F. & C. R. Parkes, 9-270; Jack Hall, 9-366; Poleman, 9-376; Kerr v. Roach, 9-566; Daniel Derkert, 10-1; Joseph Solomon, 10-9.

in the matter shall, on exception taken, be subject to the final decision of the said court.<sup>148</sup>

SEC. 5046.—All the property conveyed by the bankrupt in fraud<sup>149</sup> of his creditors; all rights in equity, choses in action, patent rights, and copyrights; all debts due him, or any person for his use, and all liens and securities therefor; and all his rights of action for property or estate, real or personal, and for any cause of action which he had against any person arising from contract or from the unlawful taking or detention, or injury to the property of the bankrupt; and all his rights of redeeming such property or estate; together

with the like right, title, power, and authority to sell, manage, dispose of, sue for, and recover or defend the same, as the bankrupt might have had if no assignment had been made, shall, in virtue of the adjudication of bankruptcy and the appointment of his assignee, but subject to the exceptions stated in the preceding section, be at once vested in such assignee.

SEC. 5047.—The assignee shall have the likeremedy<sup>150</sup> to recover all the estate, debts, and effects in his own name as the debtor might have had if the decree in bankruptcy had not been rendered and no assignment had been made. If, at the time of the commencement of the proceed-

#### 148. ASSIGNEE DUTY.

Shields, 1-608; Farish, 2-168; Perdue, 2-183; Jackson & Pearce, 2-508; Gainey, 2-525; C. Hunt, 5-493; C. H. Preston, 6-545.

#### 149. FRAUDULENT CONVEYANCES.

Stewart v. Isidor et al., 1-485; Bradshaw v. Klein, 1-542; Meyers, 1-581; Sedgwick v. Menck, 1-675; Lukens v. Airds, 2-81; Bill v. Beckwith et al., 2-241; Hawkins v. First National Bank of Hastings, 2-338; Metzger, 2-355; Foster v. Hackley & Sons, 2-406; Hussman, 2-437; Henkel, 2-546; Randall, 3-18; Driggs v. Russell, 3-161; Eldred, 3-256; Manly, 3-291; Broome, 3-343; Gillespie v. McKnight, 3-468; Goodwin v. Sharkey, 3-558; Jenkins v. Mayer, 3-776; Wynne, 4-28; John Maxwell McKay, 4-67; Fuller, 4-115; Allen v. E. A. Massey et al., 4-248; Martin v. Smith, 4-275; Kahley, 4-378; Antrim v. Kelly, 4-587; Cookingham v. Ferguson, 4-636; Post v. Corbin, 5-12; Keating v. Keefer, 5-133; Harvey v. Crane, 5-218; Rainsford, 5-381; Cox v. Wilder et al.,

5-443; Case v. Phelps et al., 5-452; Pratt v. Curtis, 6-139; Davis v. Anderson et al., 6-145; Rooney, 6-163; United States v. Pusey, 6-284; Edmondson v. Hyde, 7-1; Smith v. Kehr, 7-97; Cox v. Wilder, 7-241; Perrin et al., 7-283; Beal v. Harrell, 7-400; Massey v. Allen, 7-401; Bingham v. Claffin et al., 7-412; Geo. P. Morrill, 8-117; Fisher v. Henderson et al., 8-175; Hyde v. Sontag & Eldridge, 8-225; Bean v. Amsink, 8-228; Thornhill & Co. v. Link, 8-521; Mitchell v. McKibbon, 8-548; Walbrun v. Babbitt, 9-1; Harrell v. Beall, 9-49; Kansas City Stone Manuf. Co., 9-76; Smith v. Little, 9-111; Burfee, First National Bank, 9-314; Freeland & Gerson v. Holloman, 9-331; Catlin v. Hoffman, 9-342; Partridge v. Dearborn, 9-474; Sedgwick v. Place, 10-28; Wm. Penny v. A. H. Taylor, 10-200; Smith v. McLean et al., 10-260; J. S. Beecher, assignee, v. Isabella Clark et al., 10-385.

#### 150. SUITS BY ASSIGNEE.

Zantzinger v. Ribble, 4-724; Morss v. Grittmann, 10-132.

ings in bankruptcy, an action is pending<sup>151</sup> in the name of the debtor for the recovery of a debt or other thing which might or ought to pass to the assignee by the assignment, the assignee shall, if he requires it, be admitted to prosecute the action in his own name, in like manner and with like effect as if it had been originally commenced by him. And if any suit at law or in equity, in which the bankrupt is a party in his own name, is pending at the time of the adjudication of bankruptcy, the assignee may defend the same in the same manner and with the like effect as it might have been defended by the bankrupt.<sup>152</sup>

SEC. 5048.—No suit pending in the name of the assignee shall be abated by his death or removal; but, upon the motion of the surviving or remaining or new assignee, as the case may be, he shall be admitted to prosecute the suit in like manner and with like effect as if it had been originally commenced by him.

#### 151. PENDING SUITS.

Clark et al., 3-491; Gunther v. Greenfield, 3-730; Samson v. Burton, 4-1; Clark & Bininger, 5-255; Traders' Nat. Bank v. Campbell, 6-353

#### 152. STATE COURTS.

Hugh Campbell, 1-165; S. & M. Burns ex-parte Wm. Burns, 1-174; Glaser, 1-241; New York Kerosene Oil Co., 3-125; Clifton et al. v. Foster et al., 3-656; Smith v. Buchanan et al., 4-397; Irwin Davis, 4-716; Goodall v. Tuttle, 7-198; Safe Deposit & Savings Institution, 7-393; Voorhes v. Frisbie, 8-152; Payson v. Dietz, 8-193; Jackson v. Miller, 9-143; Citizens' Savings Bank, 9-152; Cook v. Waters et al., 9-155; Appleton v. Bowles, 9-354;

SEC. 5049.—A copy, duly certified by the clerk of the court, under the seal thereof, of the assignment shall be conclusive evidence<sup>153</sup> of the title of the assignee to take, hold, sue for, and recover the property of the bankrupt.

SEC. 5050.—No person shall be entitled, as against the assignee, to withhold from him possession of any books of account of the bankrupt, or claim any lien thereon.<sup>154</sup>

SEC. 5051.—The debtor shall, at the request of the assignee and at the expense of the estate, make and execute any instruments, deeds, and writings, which may be proper to enable the assignee to possess himself fully of all the assets of the bankrupt.<sup>155</sup>

SEC. 5052.—No mortgage of any vessel, or of any other goods or chattels made as security for any debt, in good faith and for a present consid-

Cole v. Roach, 10-288; Morris v. Swartz, 10-305; Cogdell v. Exum, 10-327; James H. Mills et al. v. A. B. Davis et al., 10-340; Allen & Co. v. Montgomery, 10-503.

#### 153. EVIDENCE.

Herndon v. Howard, 4-212; Zantzinger v. Ribble, 4-724; Rooney, 6-163; Morris et al. v. Swarts, 10-305.

#### 154. WHEN CLAIMED BY PURCHASER IN GOOD FAITH.

Rogers v. Winsor, 6-246.

#### 155. SUBSTITUTION IN PENDING SUITS.

Clark et al., 3-491; Samson v. Burton, 4-1; Clark & Bininger, 5-255.

eration, and otherwise valid, and duly recorded pursuant to any statute of the United States or of any State, shall be invalidated or affected by an assignment in bankruptcy.<sup>156</sup>

SEC. 5053.—No property held by the bankrupt in trust, shall pass by the assignment.<sup>157</sup>

SEC. 5054.—The assignee shall immediately give notice<sup>158</sup> of his appointment by publication, at least once a week for three successive weeks, in such newspapers as shall for that purpose be designated by the court, due regard being had to their general circulation in the district or in that portion of the district in which the bankrupt and his creditors shall reside, and shall, within six months, cause the assignment to him to be recorded in every registry of deeds or other office in the United States where a conveyance of any lands owned by the bankrupt ought, by law, to be recorded.<sup>159</sup>

SEC. 5055.—The assignee shall demand and receive from all parties holding the same, all the estate assigned or intended to be assigned.<sup>160</sup>

SEC. 5056.—No person shall be entitled to maintain an action against an assignee in bankruptcy for anything done by him, as such assignee, without previously giving him twenty days' notice of such action, specifying the cause thereof, to the end that such assignee may have an opportunity of tendering amends, should he see fit to do so.

SEC. 5057.—No suit, either at law or in equity, shall be maintainable in any court between an assignee in bankruptcy and a person claiming an adverse interest, touching any property or rights of property transferable to or vested in such assignee, unless brought within two years<sup>161</sup> from the time when the cause of action accrued for or against such assignee. And this provision shall

#### 156. THIS SECTION MERELY PRECAUTIONARY.

Griffiths, 3-731; Wynne, 4-23; Potter et al. v. Coggeshall, 4-73; Dow, 6-10; Edmonson v. Hyde, 7-1.

#### 157. TRUST PROPERTY AND TRUSTEES.

Ungewitter v. Von Sachs, 3-723; Jane-way, 4-100; Darby, 4-211; White v. Jones, 6-175; O'Neale, 6-425; Jaycox & Green, 7-303; Hosie, 7-601; Fisher v. Henderson, 8-175; King, 9-140; Sawyer et al. v. Hoag et al., 9-145; Lockett v. Hoge, 9-167; Tesson, 9-378; Wood M. & R. Co. v. Brooke, 9-395; Cook v. Tullis, 9-433; Clark & Daugerty, 10-21.

#### 158. NOTICE OF APPOINTMENT.

Bellamy, 1-64; Littlefield, 3-57.

#### 159. RECORDING ASSIGNMENT.

Neale, 3-177; Davis v. Anderson, 6-145; Stuart v. Hines, 6-416.

#### 160. PROPERTY RECEIVED BY MISTAKE.

Noakes, 1-592.

#### 161. A JURISDICTIONAL LIMITATION.

Martin v. Smith et al., 4-275; Sedgwick v. Casey, 4-496; Masterson, 4-553; Krogman, 5-116; Peiper v. Harmer, 5-252; Davis v. Anderson et al., 6-145; Phelps v. Sellick, 8-390; Smith v. Crawford, 9-38; Freeland & Garson v. Holloman, 9-331.

not, in any case, revive a right of action barred at the time when an assignee is appointed.

SEC. 5058.—The assignee shall keep a regular account of all money received by him as assignee, to which every creditor shall, at reasonable times, have free resort.

SEC. 5059.—The assignee shall, as soon as may be, after receiving any money belonging to the estate, deposit the same in some bank in his name as assignee, or otherwise keep it distinct from all other money in his possession; and shall, as far as practicable, keep all goods and effects belonging to the estate separate from all other goods in his possession, or designated by appropriate marks, so that they may be easily and clearly distinguished, and may not be liable to be taken as his property, or for the payment of his debts.<sup>162</sup>

#### 162. DUTIES OF ASSIGNEE.

Geo. E. White & John May, 1-218; Wm. H. Hughes, 1-225; Graves, 1-237; J. McClellan, 1-389; Geo. W. Pennington v. Sale & Phelan et al., 1-572; Thos. Noakes, 1-592; David Shields, 1-603; Lawson, 2-54; Fernberg et al., 2-353; Metzger, 2-355; Morgan, Root & Co. v. Mastick, 2-521; Noble, 3-97; Eidon, 3-106; Bogert & Oakley, 3-651; Bushey, 3-730; Charles H. Wynne, 4-23; McKinsey & Brown v. Harding, 4-39; Mallory, 4-153; Herndon v. Howard, 4-212; Dewey, 4-412; The Troy Woolen Co., 4-629; Goodall, assignee, v. Tuttle, 7-193; Hay et al., 7-344; Jones, 7-506; Babbitt, assign., v. Burgess, 7-561.

#### 163. DISTRIBUTION.

Haynes, 2-227; Bridgman, 2-252; Edw. Bigelow, David Bigelow & Nathan Kellogg, 2-371; White, assign., v. Raftery, 3-221; Erwin & Hardee, 3-580; Silverman,

SEC. 5060.—When it appears that the distribution<sup>163</sup> of the estate may be delayed by litigation or other cause,<sup>164</sup> the court may direct the temporary investment of the money belonging to such estate in securities<sup>165</sup> to be approved by the judge or Register, or may authorize it to be deposited in any convenient bank upon such interest, not exceeding the legal rate, as the bank may contract with the assignee to pay thereon.<sup>166</sup>

SEC. 5061.—The assignee, under the direction of the court, may submit any controversy arising in the settlement of demands against the estate, or of debts due to it, to the determination of arbitrators, to be chosen by him and the other party to the controversy, and, under such direction, may compound and settle any such controversy by agreement with the other party as he thinks proper and most for the interest of the creditors.<sup>167</sup>

4-522; Howard, Cole & Co., 4-571; Newland, 9-62; Stuyvesant Bank, 9-318; Rice, 9-373; McConnell, 9-887.

#### 164. DIVIDENDS.

N. Y. Mail S. S. Co., 3-280; Jervis v. Smith, 3-594; Rosenthal, 10-191.

#### 165. SECURITIES.

Avery v. Johann, 3-144; High & Hubbard, 3-191; Gregg, 3-529; Jervis v. Smith, 3-594; J. M. Snedaker, 3-629; Chas. H. Wynne, 4-23; Clark v. Iselin, 9-19; Grinnell & Co., 9-29; Newland, 9-62; Tiffany et al. v. Boatman's S. I., 9-245; Catlin v. Hoffman, 9-342.

#### 166. SURPLUS FUNDS.

Hoyt, 3-55; Hyde v. Woods, 10-54; Bank of North Carolina, 10-289.

#### 167. COMPROMISE.

Graves, 1-237; Diblee, 3-72.

SEC. 5062.—The assignee shall sell<sup>168</sup> all such unincumbered estate, real and personal, which comes to his hands, on such terms as he thinks most for the interest of the creditors; but, upon petition of any person interested, and for cause shown, the court may make such order concerning the time, place, and manner of sale, as will, in its opinion, prove to the interest of the creditors.

SEC. 5062 (A).—That the court may, in its discretion, on sufficient cause shown, and upon notice and hearing, direct the receiver or assignee to take possession of the property, and carry on the business of the debtor, or any part thereof, under the direction of the court, when, in its judgment, the interest of the estate as well as of the creditors, will be promoted thereby, but not for a period exceeding nine months from the time the debtor shall have been declared a bankrupt.

*Provided*, that such order shall not be made until the court shall be satisfied that it is approved by a majority in value of the creditors.<sup>169</sup>

SEC. 5062 (B).—That, unless otherwise ordered by the court, the assignee shall sell the property of the

bankrupt, whether real or personal, at public auction, in such parts or parcels, and at such times and places as shall be best calculated to produce the greatest amount with the least expense. All notices of public sales under this act, by any assignee or officer of the court, shall be published once a week for three consecutive weeks, in the newspaper or newspapers to be designated by the judge, which, in his opinion, shall be best calculated to give general notice of the sale. And the court, on the application of any party in interest, shall have complete supervisory power over such sales, including the power to set aside the same and to order a resale, so that the property sold shall realize the largest sum. And the court may, in its discretion, order any real estate of the bankrupt, or any part thereof, to be sold for one-fourth cash at the time of sale, and the residue within eighteen months, in such instalments as the court may direct, bearing interest at the rate of seven per centum per annum, and secured by proper mortgages or lien upon the property so sold. And it shall be the duty of every assignee to keep a regular account of all moneys received or expended by him as such assignee, to which account every creditor shall, at reason-

#### 168. SALES BY ASSIGNEE.

White et al., 1-218; Davis, assign. Bettel, et al., 2-391; Bolander v. Gentry, 2-655; Kahley et al., 4-378; Hutchings, 4-384; Hanna, 4-411; Troy Woolen Co., 4-629; Hanna, 5-292; Knight v. Cheney, 5-305; Davis v. Anderson et al., 6-145; Ryan & Griffin, 6-235; Pusey, 7-45; Smith, assign., v. Kehr et al., 7-97; Lyon, 7-182; Sedgwick, assignee, v. Wormser, 7-186;

McGilton et al., 7-294; National Iron Co., 8-422; Whitman, assign., v. Butler, 8-487; Lenihan v. Haman et al., 8-557; Dillard, 9-8; Grinnell & Co., 9-29; Samuel Schapter, 9-324; Hall v. Scovell, 10-295.

#### 169. EXPENDITURES ON PROPERTY.

Foster v. Ames, 2-455.



able times, have free access. If any assignee shall fail or neglect to well and faithfully discharge his duties in the sale or disposition of property as above contemplated, it shall be the duty of the court to remove such assignee, and he shall forfeit all fees and emoluments to which he might be entitled in connection with such sale. And if any assignee shall, in any manner, in violation of his duty aforesaid, unfairly or wrongfully sell or dispose of, or in any manner fraudulently or corruptly combine, conspire, or agree with any person or persons, with intent to unfairly or wrongfully sell or dispose of the property committed to his charge, he shall, upon proof thereof, be removed, and forfeit all fees or other compensation for any and all services in connection with such bankrupt's estate, and, upon conviction thereof before any court of competent jurisdiction, shall be liable to a fine of not more than ten thousand dollars, or imprisonment in the penitentiary for a term of not exceeding two years, or both fine and imprisonment, at the discretion of the court. And any person so combining, conspiring, or agreeing with such assignee for the purpose aforesaid, shall, upon conviction, be liable to a like punishment.

That the assignee shall report, under oath, to the court, at least as often as once in three months, the condition of the estate in his charge, and the state of his accounts in detail, and at all other times when the court, on motion or otherwise, shall so order. And on any settlement of the accounts of any assignee, he shall be required to account for all interest, benefit, or advantage received, or in any manner agreed to be received, directly or indirectly, from the use, disposal, or proceeds of the bankrupt's estate. And he shall be required, upon such settlement, to make and file in court an affidavit declaring, according to the truth, whether he has or has not, as the case may be, received, or is or is not, as the case may be, to receive, directly or indirectly, any interest, benefit or advantage, from the use or deposit of such funds; and such assignee may be examined orally upon the same subject, and if he shall willfully swear falsely, either in such affidavit or examination, or to his report provided for in this section, he shall be deemed to be guilty of perjury, and, on conviction thereof, be punished by imprisonment in the penitentiary not less than one and not more than five years.<sup>170</sup>

#### 170. LIABILITIES AND DUTIES OF ASSIGNEES.

Graves, 1-237; David Shields, 1-693; Lawson, 2-54; Bushey, 3-685; Mallory, 4-153; Price, 4-406; Dewey, 4-412; Blodget & Sanford, 5-472; Blaisdell et al., 6-78; Noyes, 6-277; Sacchi, 6-398, 6-497; Morse, 7-56; Woods et al. v. Bukewell et al., 7-405; Perkins, 8-56; Gilbert v. Priest, 8-159; Haas & Sampson, 8-189; Payson, assig., v. Dietz, 8-193; O'Dowd, 8-451; Wilson v. Childs, Anshutz v. Campbell,

8-527; Christman v. Haynes, 8-528; Mitchell v. McKibbin, 8-548; Sweet, 9-48; Jackson v. Miller, 9-143; Cook v. Waters et al., 9-155; Schapter, 9-324; Anderson, 9-360; Prescott, 9-385; Fourth National Bank v. City National Bank, 10-44; Pierson, 10-107; Morse v. Gritmann, 10-132; Witkowski, 10-209; Merrick G. Reed et al., appellants, v. Euclid W. Alerhouse et al., respondents, 10-277; Hall v. Scovel, 10-296; Morris v. Swartz, 10-305; Daniel Cogdell, assignee, v. Wm. J. Exum, 10-327; Wheelock v. Lee, 10-363; Nathaniel



**SEC. 5063.**—Whenever it appears to the satisfaction of the court that the title to any portion of an estate, real or personal, which has come into possession of the assignee, or which is claimed by him, is in dispute, the court may, upon the petition of the assignee, and after such notice to the claimant, his agent or attorney, as the court shall deem reasonable, order it to be sold, under the direction of the assignee, who shall hold the funds received in place of the estate disposed of; and the proceeds of the sale shall be considered the measure of the value of the property in any suit or controversy between the parties in any court. But this provision shall not prevent the recovery of the property from the possession of the assignee by any proper action commenced at any time before the court orders the sale.<sup>171</sup>

**SEC. 5064.**—The assignee may sell and assign under the direction of the court, and in such manner as the court shall order, any outstanding claims or other property in his hands, due or belonging to the estate, which

cannot be collected and received by him without unreasonable or inconvenient delay or expense.

**SEC. 5065.**—When it appears to the satisfaction of the court that the estate of the debtor, or any part thereof, is of a perishable nature, or liable to deteriorate in value, the court may order the same to be sold in such manner as may be deemed most expedient, under the direction of the messenger or assignee, as the case may be, who shall hold the funds received in place of the estate disposed of.<sup>172</sup>

**SEC. 5066.**—The assignee shall have authority, under the order and direction of the court, to redeem or discharge any mortgage or conditional contract, or pledge or deposit, or lien upon any property, real or personal, whenever payable, and to tender due performance of the condition thereof, or to sell the same subject to such mortgage, lien, or other incumbrance.<sup>173</sup>

**SEC. 5067.**—<sup>174</sup>All debts due and

---

Meyers, assignee of St. Louis Soap Co., v. F. A. Seeley, 10-441; St. Helen's Mill Co., 10-414; Atkinson v. Kellogg, 10-535.

#### 171. DISPUTED PROPERTY.

Noakes, 1-592; March v. Heatowlat, 2-180; Bill v. Beckwith, 2-241; Vogel, 2-427; Foster v. Ames, 2-455; Hunt, 2-539; Markson & Spaulding v. Heany, 4-510; Knight v. Cheney, 5-305.

#### 172. PERISHABLE PROPERTY.

Metzger et al., 1-38; Graves, 1-237.

---

#### 173. PRIOR TO MATURITY OF DEBT.

Foster v. Ames et al., 2-455.

#### 174. PROOF OF DEBTS.

Freeman Orne, 1-57; Wm. H. Knoepfel, 1-70; James M. Loweree, 1-74; Eliza Altenhain, 1-85; James J. Purvis, 1-163; James T. Ray, 1-203; Anonymous, 1-219; Samuel W. Levy & Mark Levy, 1-327; Daniel P. Kingsley, 1-329; Henry C. Bolton, 1-370; Jonathan J. Milner, 1-419; Luther Sheppard, 1-439; Addison Moore, ex parte The National Exchange Bank of Columbus, 1-470; Louis Myers, 1-581; Thomas Princeton, 1-618; Rankin et al. v. Florida Atl. and G. M. R. R.

payable from the bankrupt at the time of the commencement of proceedings in bankruptcy, and all debts then existing but not payable until a future day, a rebate of interest being made when no interest is payable by the terms of the contract,"<sup>176</sup> may be proved "<sup>176</sup> "<sup>177</sup> against the estate of the bankrupt. All demands against the bankrupt for or on account of any goods or chattels wrongfully taken,

converted, or withheld by him, may be proved and allowed as debts to the amount "<sup>178</sup> of the value of the property so taken or withheld, with interest."<sup>179</sup>

When the bankrupt is liable for unliquidated damages arising out of any contract or promise, or on account of any goods or chattels wrongfully taken, converted, or withheld, the court may cause such damages to be assessed in such mode as it may deem

Co., 1-647; Edward Hubbard, jr., 1-679; Haley, 2-36; Strauss, 2-48; Jones, 2-59; Anonymous, 2-68; Rundle & Jones, 2-113. Clough, 2-151; Arnold, 2-160; Mead, assignees, v. National Bank of Fayetteville, 2-173; Brisco, 2-226; James, 2-226; Myron Rosenberg, 2-236; McIntosh, 2-506; Colman, 2-562; Ruehle, 2-577; Emison, 2-595; Murdock, 3-146; Benj. H. Myrick 3-156; High & Hubbard, 3-191; Fortune 3-312; Kingsbury et al., 3-318; Muller & Brentano, 3-329; Davidson, 3-418; Montgomery, 3-430; Vickery, 3-696; Crawford, 3-698; Estate of Elder, 3-670; George G. Phelps v. S. P. Sterns, Same v. Smith Dudley, 4-84; Bloss, 4-147; Whittaker, 4-160; Richter's Estate, 4-221; Stevens, 4-367; Scott & McCarty, 4-414; Ellerhorst & Co., 5-144; Frank, 5-194; Beers et al., 5-211; Isaacs & Cohn, 6-92; Davis v. Anderson et al., 6-145; Pease et al., 6-173; Clark & Bininger, 6-202; Boston, H. & Erie R. R. Co., 6-209; Nounnan & Co., 6-579; Hennocksburg & Block, 7-37; Forsyth & Murtha, 7-174; Emery et al., assignee, v. Canal National Bank, 7-217; Jaycox & Green, 7-303; Merrick, 7-459; Jaycox & Green, 7-578; Granger & Sabin, 8-30; Firemens' Ins. Co., 8-123; Adams v. Meyers, assignee, 8-214; Jaycox & Green, 8-241; Archenbrowne, 8-429; Riggin v. Magwire, 8-484; Rosey, 8-509; Newland, 9-62; Stokes v. State of Georgia, 9-191; Leland et al., 9-209; W. P. Long, 9-227; Stephenson v. Jackson, 9-256; Bugbee, 9-258; Whyte, 9-267; May & Merwin, 9-419; Bartusch, 9-478; Clark & Daugherty, 10-21; Lake Superior Ship Canal, R. R. and Iron Co., 10-76; Thos. Morrison,

10-165; G. H. Lane & Co. v. C. H. Boynton, 10-135; Buckhause & Gough ex parte C. L. Flynn, 10-206; The Ansonia Brass & Copper Co. v. The New Lamp Chimney Co., 10-355.

#### 175. PARTNERSHIP.

Frear, 1-660; Sigsby & Willis, 3-207; Frost et al., 3-736; R. Stevens, 5-112; Hunt, Tillinghast & Co. v. Pook & Steere, 5-161; Warren and Charles Leland, 5-222; Bucyrus Machine Co., 5-303; Taylor v. Rasch & Bernart, 5-399; Krueger et al., 5-439; Dunkle & Driesbach, 7-107; Forsyth v. Murtha, 7-174; King et al., 7-279; Bush v. Crawford, 7-299; Pierson, 10-107; Lane & Co., 10-135; Blodget & Sanford, 10-145; H. C. McFarland & Co., 10-381.

#### 176. EQUITABLE DEBTS.

Blandin, 5-39.

#### 177. CLAIMS BY BANKRUPT'S WIFE.

Bigelow, 2-556; Blandin, 5-39; David W. Jones, 9-556.

#### 178. THE AMOUNT THAT MAY BE PROVED.

Bailey v. Nichols, 2-478; Lathrop, 3-410.

#### 179. TORTS AND DAMAGES.

Clough, 2-151; Sidle, 2-220; Sutherland, 3-314; Hennocksburgh & Block, 7-37; Daniel Sheehan, 8-345; Louis H. Rosey, 8-509.

best, and the sum so assessed may be proved against the estate.<sup>180 181 182</sup>

SEC. 5068.—In all cases of contingent debts and contingent liabilities contracted by the bankrupt, and not herein otherwise provided for, the creditor may make claim therefor, and have his claim allowed, with the right to share in the dividends, if the contingency happens before the order for the final dividend; or he may, at any time, apply to the court to have the present value of the debt or liability ascertained and liquidated, which shall then be done in such manner as the court shall order, and he shall be allowed to prove for the amount so ascertained.<sup>183</sup>

SEC. 5069.—When the bankrupt is bound as drawer, indorser, surety, bail, or guarantor upon any bill, bond, note, or any other specialty or contract, or for any debt of another

person, but his liability does not become absolute until after the adjudication of bankruptcy, the creditor may prove the same after such liability becomes fixed, and before the final dividend is declared.<sup>184</sup>

SEC. 5070.—Any person liable as bail, surety, guarantor, or otherwise for the bankrupt, who shall have paid the debt, or any part thereof, in discharge of the whole, shall be entitled to prove such debt, or to stand in the place of the creditor if the creditor has proved the same, although such payments shall have been made after the proceedings in bankruptcy were commenced. And any person so liable for the bankrupt, and who has not paid the whole of such debt, but is still liable for the same or any part thereof, may, if the creditor fails or omits to prove such debt, prove the same either in the name of the creditor or otherwise, as may be provided by the general orders and subject to such regula-

#### 180. DEFENSES.

Milner, 1-419; Ray, 1-203; Kingsley, 1-329; Harden, 1-395; Sheppard, 1-439; Schlichter, 2-336; Miller v. Keys, 3-224; Hinds, 3-351; Lathrop, 3-417; Murray, 3-765; Cornwall, 4-400; Paddock, 6-132; Howard Cole & Co., 6-372; Nounan & Co., 7-15; Buckner v. Street, 7-255; Holleman v. Dewey, 7-269; Jaycox & Green, 7-578; Town, 8-38; Rachel Goodman, 8-380; Oliver Bugbee, 9-258; P. K. Chandler, 9-514.

#### 181. USURY.

Moore v. National Exchange Bank of Columbus, 1-470; Robert Pittock, 8-78; Riggs, Lechtenberg & Co., 8-90; Prescott, 9-385.

#### 182. EFFECTS OF ACTS DONE AFTER BANKRUPTCY.

Williams, 2-229; Montgomery, 3-429; S. Brown, 3-584; Vickery, 3-696; Crawford, 3-698; Stevens, 4-367; Gallison, 5-353; Mansfield, 6-388; Louis H. Rosey, 8-509.

#### 183. CONTINGENT LIABILITIES.

Fireman's Ins. Co., 8-123; Republic Ins. Co., 8-197; United States v. Throckmorton, 8-309; Robinson v. Pesant, 8-426; Riggin v. Maguire, 8-484; Jones v. Knox, 8-559.

#### 184. WHEN AND HOW PROVED.

Cram, 1-504; Nickodemus, 3-230; Loder, 4-190; Crawford, 5-301; Granger v. Sabin, 8-30.

tions and limitations as may be established by such general orders.<sup>186</sup>

SEC. 5071.—Where the bankrupt is liable to pay rent or other debt falling due at fixed and stated periods, the creditor may prove for a proportionate part thereof up to the time of the bankruptcy, as if the same grew due from day to day, and not at such fixed and stated periods.<sup>186</sup>

SEC. 5072.—No debts other than those specified in the five preceding sections shall be proved or allowed against the estate.<sup>187</sup>

SEC. 5073.—In all cases of mutual debts<sup>188</sup> or mutual credits between the parties, the account between them shall be stated, and one debt

set off against the other, and the balance only shall be allowed or paid, but no set-off shall be allowed in favor of any debtor to the bankrupt of a claim in its nature not provable against the estate, or of a claim purchased by or transferred to him after the filing of the petition,\* or in cases of compulsory bankruptcy, after the act of bankruptcy upon or in respect of which the adjudication shall be made, and with a view of making such set-off.

SEC. 5074.—When the bankrupt, at the time of adjudication, is liable upon any bill of exchange, promissory note, or other obligation in respect of distinct contracts as a member of two or more firms carrying on separate and distinct trades, and

#### 185. PRACTICE HEREUNDER.

Sigsby v. Willis, 3-207; Montgomery, 3-426; Howard, Cole & Co., 4-571; Ellerhorst & Co., 5-144; Geo. P. Morril, 8-117; Talcott, 9-502.

##### Section 5071 :

Walton, 1-557; Appold, 1-621; Brock & Terrell, 2-643; Merryfield, 3-98; Walker v. Barton, 3-265; Joslyn, 3-473; Wynne, 4-23; Laurie, 4-32; Trim, 5-23; Webb & Co, 6-302; H. L. Butler, 6-501; Ten Eyck & Choate, 7-26; Longstreth v. Pennock, 7-409; Austin v. O'Reiley, 8-129; Robinson v. Pesant, 8-426; Wilson v. Childs, 8-527; May & Merwin, 9-419; Dyke & Marr, 9-430; Hotchkiss, 9-488; John Clancy, 10-215.

#### 186. PROOF OF RENT.

Walton, 1-557; Appold, 1-621; Brock v. Terrell, 2-643; Merryfield, 3-98; Walker v. Barton, 3-265; Joslyn, 3-473; Wynne,

4-23; Trim et al., 5-23; Webb & Co., 6-302; H. L. Butler, 6-501; Ten Eyck & Choate, 7-26; Longstreet v. Pennock, 7-449; Austin v. O'Reilly, 8-129; Robinson v. Pesant, 8-426; David Weamer, 8-527; May & Merryfield, 9-419; Dyke & Marr, 9-430; Hotchkiss, 9-488; John Clancy, 10-215.

#### 187. DISCHARGE AFFECTS ONLY DEBTS PROVABLE.

May v. Merwin, 9-419.

with

#### 188. MUTUAL DEBTS.

Orne, 1-57; Catlin v. Foster, 3-540; Jones v. Kenny et al., 4-369; Drake v. Rollo, 4-689; Hitchcock v. Rollo, 4-690; Forsyth v. Woods, 5-78; City Bank, 6-71; H. Petrie, 7-332; Scammon v. Kimball, 8-337; Troy Woolen Co., 8-412; Clark v. Iselin, 9-19; Sawyer v. Hoag, 9-145; Gray v. Rollo, 9-337; Hovey v. Howe Ins. Co., 10-224.

\* So amended by Act June 23d, 1874.

having distinct estates to be wound up in bankruptcy, or as a sole trader<sup>180</sup> and also as a member of a firm, the circumstance that such firms are in whole or in part composed of the same individuals, or that the sole contractor is also one of the joint contractors, shall not prevent proof and receipt of dividend in respect of such distinct contracts against the estates respectively liable upon such contracts.

#### 189. SOLE TRADE.

Emery v. Canal Nat. Bank, 7-217; Buckhause & Gough, 10-206.

#### 190. SECURED CREDITOR.

Bigelow et al., 1-632; Bloss, 4-147; W. B. & J. F. Alexander, 4-178; Scott & McCarty, 4-414; Johann, 4-434; Stansell, 6-183; Jaycox & Green, 7-303; Hanna, 7-502; Hartel, 7-559; Parkes & Parkes, 10-82.

#### 191. MORTGAGES.

Hawkins v. National Bank of Hastings, 2-338; Soldiers' Bus., Mess. & Dispatch Co., 2-519; York & Hoover, 3-661; Griffith, 3-731; Jenkins v. Mayer, 3-776; Wynne, 4-23; Lacy, 4-62; Snedaker, 4-168; Eldridge, 4-498; Harvey v. Crane, 5-218; Sands Brewing Co., 6-101; Sacchi, 6-497; Edith, 6-449; Haake, 7-61; J. Hartel, 7-559; Hutchings v. Muzzy Iron Works, 8-458; Jordan, 9-416; Clark & Daughtrey, 10-21; Union Pacific R. R. Co., 10-178; Smith v. McLean et al., 10-261; Kane v. Rice, 10-469; Foster v. Rhodes, 10-523.

#### 192. LIENS PRESERVED.

Bigelow, 1-667; Perdue, 2-183; Davis, assignee of Bittel, 2-392; Brooks, 2-466; Hambright, 2-498; Brock v. Terrell, 2-643; Bryan, 3-110; Buse, 3-215; Brand, 3-324; Clark v. Bininger, 3-518; Hutto, 3-787; Wynne, 4-23; Angier, 4-619; Hester,

SEC. 5075.—When a creditor<sup>190</sup> has a mortgage<sup>191</sup> or pledge of real or personal property<sup>192</sup> of the bankrupt, or a lien<sup>193 194</sup> thereon for securing the payment of a debt owing to him from the bankrupt, he shall be admitted as a creditor<sup>190</sup> only for the balance of the debt after deducting the value of such property, to be ascertained by agreement between him and the assignee, or by a sale thereof,<sup>195</sup> to be made in such

5-285; A. G. O'Neale, 6-425; J. C. Mitchell, 8-47; Frank F. Newland, 9-62; Stuyvesant Bank, 9-318; Fourth Nat. Bank v. City Bank, 10-44; Thomas Morrison, 10-105; Harlow, 10-280; Meeks v. Whatly, 10-498.

#### 193. JUDGMENTS.

Campbell, 1-165; Burns, 1-174; Schnepf, 1-190; Bernstein, 1-199; Winn, 1-499; Pennington v. Sale & Phelan, 1-572; Hafer & Bros., 1-586; Jones v. Leach, 1-595; Smith, 1-599; Black & Secor, 2-171; Kerr, 2-388; Haughrey v. Albin, 2-399; Armstrong v. Rickey Bros., 2-473; McIntosh, 2-506; Jordan, 3-182; Mebane, 3-347; Hinds, 3-351; Cozart, 3-508; Erwin & Hardee, 3-580; Dean, 3-769; McKinsey & Brown v. Harding, 4-39; Fuller, 4-115; Weeks, 4-364; Swope v. Arnold, 5-148; Cook v. Waters, 9-155; Rieser v. Johnson, 10-467; Piper v. Baldy, 10-517.

#### 194. MECHANICS' LIENS.

Dey, 3-305; Clifton v. Foster, 3-656; Scott, 3-742; Coulter, 5-64; Edith, 6-449; Hope Mining Co., 7-598.

#### 195. SALE FREE FROM INCUMBRANCES.

Schnepf, 1-190; T. R. Stewart, 1-278; McClellan, 1-389; Barrow et al., 1-481; Salmon, 2-56; Foster v. Ames, 2-455; Hambright 2-498; Columbian Metal Works, 3-75; Mebane, 3-347; Dumont, 4-17, Kahley, 4-378; Hanna, 4-411; Eldridge, 4-498; Markson & Spaulding v. Heaney, 4-510; Brombey v. Smith, 5-152;

manner as the court shall direct; <sup>199</sup> or the creditor may release or convey his claim to the assignee upon such property, and be admitted to prove his whole debt. If the value of the property exceeds the sum for which it is so held as security, the assignee may release to the creditor the bankrupt's right of redemption therein on receiving such excess; or he may sell the property, subject to the claim of the creditor thereon; and in either case the assignee and creditor, respectively, shall execute all deeds and writings necessary or proper to consummate the transaction. If the property is not so sold or released and delivered up, the creditor shall not be allowed to prove any part of his debt. <sup>197 198 199</sup>

SEC. 5076.—Creditors residing within the judicial district where the proceedings in bankruptcy are

pending shall prove their debts before one of the Registers of the court, or before a commissioner of the Circuit Court within the said district. Creditors residing without the district, but within the United States, may prove their debts before a Register in bankruptcy or a commissioner of a Circuit Court in the judicial district where such creditor or either one of joint creditors reside; but proof taken before a commissioner shall be subject to revision by the Register of the Court.

SEC. 5076 (A).—That, in addition to the officers now authorized to take a proof of debts against the estate of a bankrupt, notaries public are hereby authorized to take such proof, in the manner and under the regulations provided by law; such proof to be certified by the notary and attested by his signature and official seal. <sup>200</sup>

H. Brinkman, 6-541; Ellerhorst, 7-49; National Iron Co., 8-422; Stokes v. State, 9-191; Lake Superior Ship Canal & Iron Co., 9-298.

#### 196. SUBJECT TO INCUMBRANCES.

McClellan, 1-389; Bowie, 1-628; Lambert, 2-426; Foster v. Ames, 2-455; Kelley v. Strange, 3-8; Mebane, 3-347; McGilton, 7-294.

#### 197. ON APPLICATION OF SECURED CREDITOR.

Bridgman, 1-312; Stewart, 1-278; Winn, 1-499; Jones v. Leach, 1-595; Bigelow, 1-632; Purcell & Robinson, 2-22; Fallon, 2-277; J. O. Smith, 2-297; Davis, assignee of Bittel, 2-392; Vogel, 2-427; Hambright, 2-498; Kerosene Oil Co., 2-528; People's Mail S. S. Co., 2-553; Ruehle, 2-577; Rosenberg, 3-130; High & Hubbard, 3-192; Lee v. Franklin Av. S. Inst., 3-218; Snedaker, 3-629; York & Hoover, 3-661;

C. Dean, 3-769; Frizelle, 5-119; Davis v. Anderson, 6-145; Grinnell & Co., 9-29; George B. Grinnell, 9-137.

#### 198. PROCEEDINGS IN STATE COURTS.

Bowie, 1-628; Iron Mountain Co., 4-645; McGilton, 7-294; Phelps v. Sellick, 8-390; Whitman v. Butler, 8-487; Lenihan v. Haman, 8-557; McGready v. Harris, 9-135; Lockett v. Hoge, 9-167; Geo. W. Anderson, 9-360; Philo R. Sabin, 9-383.

#### 199. STAY OF PROCEEDINGS.

"World" Co. v. Brooks, 8-588; Maxwell et al. v. Faxton et al., 4-210; John Wilson v. M. & G. Capuro, 4-714; Penny v. Taylor, 10-201.

#### 200. BEFORE WHOM TAKEN AND EFFECT OF PROOF.

Sheppard, 1-439; Haley, 2-36; Strauss, 2-48; W. B. Merrick, 7-459.



SEC. 5077.—To entitle a claimant against the estate of a bankrupt to have his demand allowed, it must be verified by a deposition in writing,<sup>201</sup> under oath, and signed by the deponent, setting forth the demand, the consideration thereof, whether any and what securities<sup>202</sup> are held therefor, and whether any and what payments have been made thereon; that the sum claimed is justly due from the bankrupt to the claimant; that the claimant has not, nor has any other person, for his use, received any security or satisfaction whatever other than that by him set forth; that the claim was not procured for the purpose of influencing the proceedings in bankruptcy, and that no bargain or agreement, express or implied, has been made or entered into, by or on behalf of such creditor, to sell, transfer, or dispose of the claim, or any part thereof, or to take or receive, directly or indirectly, any money, property, or consideration

whatever, whereby the vote of such creditor for assignee, or any action on the part of such creditor, or any other person in the proceedings, is or shall be in any way affected, influenced, or controlled. No claim shall be allowed unless all the statements set forth in such deposition shall appear to be true.<sup>203 204</sup>

SEC. 5078.—Such oath shall be made by the claimant, testifying of his own knowledge, unless he is absent from the United States, or prevented by some other good cause from testifying, in which case the demand may be verified by the attorney or authorized agent of the claimant, testifying to the best of his knowledge, information, and belief, and setting forth his means of knowledge. Corporations may verify their claims by the oath of the president, cashier, or treasurer. The court may require or receive further per-

#### 201. PROVING CLAIMS.

Knoepfel, 1-70; Patterson, 1-100; Strauss, 2-48; Davis, assignee of Bittel, 2-392; Loder, 3-655; Elder, 3-670; Whitaker, 4-160; E. R. Stephens, 6-533; Jaycox & Green, 7-303; Lake Superior C. R. & I. Co., 7-376; W. B. Merrick, 7-459; Clarke & Daughtrey, 10-21; Lake Superior Ship Canal Co., 10-76; G. H. Lane & Co., 10-135; Buckhause & Gough, 10-206; Ansonia Brass Co. v. Chimney Co., 10-355.

#### 202. SECURED DEBTS.

Bridgman, 1-312; Winn, 1-499; Bigelow, 1-632; Davis, assignee of Bittel, 2-392; Ruehle, 2-577; Brand, 3-324; Jervis v. Smith, 3-594; Snedaker, 3-629; Davis v. Anderson, 6-145; Nounnan & Co., 6-579;

Newland, 7-477; S. Hanna, 7-502; Jaycox, & Green, 8-241; J. F. & C. R. Parkes, 10-82.

#### 203. PROVING SECURED CLAIMS AS UNSECURED.

Steward v. Isidor, 1-485; Wallace v. Conrad, 3-41; Brand, 3-324; McKinsey & Brown v. Harding, 4-39; Hoyt v. Freel, 4-131; Bloss, 4-147; Stansell, 6-183; Granger & Sabin, 8-30; Jaycox & Green, 8-241.

#### 204. AMENDMENT.

Loweree, 1-74; Edw. Hubbard, 1-679; McIntosh, 2-506; Emison, 2-595; Brand, 3-324; Montgomery, 3-429; Elder, 3-670; Clark & Biningier, 5-255; W. McConnell, 9-387; J. F. & C. R. Parkes, 10-82.



inent evidence either for or against the admission of any claim.<sup>205</sup>

SEC. 5079.—Such oath may be taken in any district before any Register or any commissioner of the Circuit Court authorized to administer oaths; or, if the creditor is in a foreign country, before any minister, consul, or vice-consul of the United States. When the proof is so made it shall be delivered or sent by mail to the Register having charge of the case.

SEC. 5080.—If the proof is satisfactory to the Register it shall be delivered or sent by mail to the assignee, who shall examine the same and compare it with the books and accounts of the bankrupt, and shall register, in a book kept by him for that purpose, the names of creditors who have proved their claims, in the order in which such proof is received, stating the time of receipt of such proof, and the amount and nature of the debts. Such books shall be open to the inspection of all the creditors. The court may require or receive further pertinent evidence either for

or against the admission of any claim.<sup>206</sup>

SEC. 5081.—The court may, on the application of the assignee, or of any creditor, or of the bankrupt, or without any application, examine upon oath the bankrupt, or any person tendering or who has made proof of a claim, and may summon any person capable of giving evidence concerning such proof, or concerning the debt sought to be proved, and shall reject all claims not duly proved, or where the proof shows the claim to be founded in fraud, illegality, or mistake.<sup>207</sup>

SEC. 5082.—A bill of exchange, promissory note, or other instrument used in evidence upon the proof of a claim, and left in court or deposited in the clerk's office, may be delivered by the Register or clerk having the custody thereof, to the person who used it, upon his filing a copy thereof, attested by the clerk of the court, who shall indorse upon it the name of the party against whose estate it has been proved, and the date and amount of any dividend declared thereon.<sup>208</sup>

#### 205. WHEN PURCHASER OR AGENT MAY PROVE.

Barrett, 2-533; Murdock, 3-146; Fortune, 3-312; Lathrop, 3-410; McKinsey & Brown v. Harding, 4-39; Frank, 5-194; Pease, 6-173; Republic Ins. Co., 8-197; Wm. Whyte, 9-267.

#### 206. DUTIES OF REGISTER AND ASSIGNEE.

Sheppard, 1-439; Bogert & Evans, 2-485; Colman, 2-563; Fortune, 3-312; Catlin v. Foster, 3-540; Loder, 3-655.

#### 207. POWER OF COURT OVER CREDITOR PROVING CLAIM.

Orne, 1-57; Patterson, 1-100; Ray, 1-203; J. O. Smith, 1-243; O'Neil, 1-677; Jones, 2-59; Comstock v. Wheeler, 2-561; Lathrop, 3-410; Herman & Herman, 3-618; Elder, 3-670; McKinsey & Brown v. Harding, 4-39; Paddock, 6-132; Cornwall, 6-305; E. R. Stephens, 6-533; Robert Pittock, 8-78.

#### 208. WITHDRAWAL OF PAPERS.

McNair, 2-343; Emison, 2-595.

**SEC. 5083.**—When a claim is presented for proof before the election of the assignee, and the judge or Register entertains doubts of its validity or of the right of the creditor to prove it, and is of opinion that such validity or right ought to be investigated by the assignee, he may postpone the proof of the claim until the assignee is chosen.<sup>200</sup>

**SEC. 5084.**—Any person who, since the 2d day of March, 1867, has accepted any preference, having reasonable cause to believe that the same was made or given by the debtor, contrary to any provisions of the act of March 2, 1867, Cap. 176, to establish a uniform system of bankruptcy,

or to any provisions of this title, shall not prove the debt or claim on account of which the preference is made or given, nor shall he receive any dividend therefrom until he shall first surrender to the assignee all property, money, benefit or advantage received by him under such preference.<sup>210</sup>

**SEC. 5085.**—The court shall allow all debts duly proved, and shall cause a list thereof to be made and certified by one of the Registers.<sup>211</sup>

**SEC. 5086.**—The court may, on the application of the assignee, or of any creditor, or without any application, at all times require the bankrupt,<sup>212</sup>

#### 209. POSTPONING PROOFS.

Orne, 157; Jones, 2-59; Noble, 3-96; Herman & Herman, 3-618, 649; Chamberlain & Chamberlain, 3-710; Stevens, 4-367; Lake Superior C. R. and L. Co., 7-376; Bartusch, 9-478.

#### 210. PREFERENCE.

Belden, 2-42; Rosenfield, 2-116; B. N. Foster, 2-232; Winthrop M. Wadsworth, assignee of Robert R. Treadwell, v. Edwin S. Tyler, 2-316; Gay, 2-358; Worthington S. Locke, 2-382; Haughrey, assignee of Reeder, v. Albin, 2-399; Armstrong v. Rikey Bros., 2-473; Morgan Root & Co. v. Erman E. Mastick, 2-521; Farrin v. Crawford et al., 2-602; Doan v. Compton & Doan, 2-607; Dibblee et al., 2-617; Lee, assignee, v. German Savings Institution, 3-218; Evans, 3-261; Kingsbury et al., 3-318; Graham, assign., v. Stark, 3-357; Davidson, 3-418; Montgomery, 3-429; Campbell, assignee, v. Trader's National Bank, 3-498; Driggs, assignee, v. Moore, 3-602; Jenkins, assignee, v. Mayer, 3-777; Tonkin & Trewatha, 4-52; Terry & Cleaver, 4-126; Richter's estate, 4-221; Munger & Champ-  
lin, 4-295; Kahley et al., 4-378; Smith, assignee, v. Buchanan et al., 4-397; Scott & McCarty, 4-414; Martin v. Toof, Phillips & Co., 4-488; Silverman, 4-522; Kipp,

4-593; Collins v. Justus Gray et al., 4-631; Cookingham et al. v. Morgan et al., 5-16; Hall v. Wager, 5-181; Hood v. Fales & Karper, 5-358; Hunt & Hornell, 5-433; Warren & Rowe v. Tenth National Bank et al., 5-479; Toof et al. v. Martin, 6-49; Bingham v. Richmond & Gibbs, 6-127; Bingham v. Frost, 6-130; E. R. Stephens, 6-533; Forsyth & Murtha, 7-174; Holland, 8-190; Stobaugh v. Mills & Fitch, 8-361; Rosey, 8-509; Coxe v. Hale, 8-562; Clark v. Iselin & Co., 9-19; Kansas City Manufacturing Co., 9-76; Wilson v. City Bank of St. Paul, 9-97; Smith v. Little, 9-111; Leland et al., 9-209; Tiffany, trustee, v. Boatman's Saving Inst., 9-245; James Jordan, 9-416; Cook v. Tullis, 9-433; Zahn v. Fry, 9-546; Clark & Daugherty, 10-21; King, 10-103; Pierson, 10-107; Bartholomew v. Bean, 10-241; Harrison v. McLaren, 10-244; Smith v. McLean et al., 10-260; Sleek et al. v. Werner's assignee, 10-580.

#### 211. POWER TO REVISE LIST.

Dean, 1-249; Mittledorfer & Co., 3-39.

#### 212. BANKRUPT'S EXAMINATION.

Baum, 1-5; Mackintire, 1-111; Bellamy, 1-64; Patterson, 1-100; Ray, 1-203; Isidor,

upon reasonable notice,"<sup>13</sup> to attend and submit to an examination, on oath, upon all matters relating to the disposal or condition of his property, to his trade and dealings with others, to his accounts concerning the same, to all debts due to or claimed from him, and to all other matters concerning his property and estate and the due settlement thereof according to law."<sup>14</sup> Such examination shall be in writing, and shall be signed by the bankrupt and filed with the other proceedings.

SEC. 5086 (A).—That in all causes and trials arising or ordered under this act, the alleged bankrupt, and any party thereto, shall be a competent witness.

1-264; Van Tuyl, 2-70; Adams, 2-95; Lanier, 2-154; McBrien, 2-197; Brant, 2-215; Robinson & Chamberlin, 2-516; Montgomery, 3-137; Gilbert, 3-152; Bromley & Co., 3-686; C. Dean, 3-769; Solis, 4-68; Veterlein, 4-599; Frizelle, 5-122; Vogel, 5-393; Heath & Huges, 7-448; Nathaniel Dole, 7-538; Salkey & Gerson, 9-107; Mendenhall, 9-285; Bank of Troy, 9-320; Jay Cook & Co., 10-126; Witkowski, 10-209; Jacob Hymes, 10-483.

#### 218. PRACTICE IN.

Patterson, 1-125; Levy & Levy, 1-138; G. W. Kimball, 1-193; Dean, 1-249; Mawson, 1-271; O'Kell, 1-303; Tanner, 1-316; Rosenfield, 1-319; Judson, 1-364; Leachman, 1-391; Koch, 1-549; Collins, 1-551; Lanier, 2-154; McNair, 2-219; Bond, 3-7; Littlefield, 3-57; Gilbert, 3-152; Holt, 3-241; Lord, 3-243; Bromley & Co., 3-686; Reakirt, 7-329; Nathaniel Dole, 7-538;

SEC. 5087.—The court may, in like manner, require the attendance of any other person as a witness, and if such person fails to attend, on being summoned thereto, the court may compel his attendance by warrant directed to the marshal, commanding him to arrest such person and bring him forthwith before the court, or before a Register in bankruptcy, for examination as a witness."<sup>15</sup>

SEC. 5088.—For good cause shown, the wife of any bankrupt may be required to attend before the court, to the end that she may be examined as a witness; and if she does not attend at the time and place specified in the order, the bankrupt shall not be entitled to a discharge unless he proves to the satisfaction of the court that

N. W. Kingsley, 7-558; Salkey & Gerson, 9-107.

#### 214. SUBJECT-MATTER OF.

Levy, 1-616; Patterson, 1-147; Rosenfield, 1-319; Tallman, 1-462; Koch, 1-549; Van Tuyl, 1-663; Carson & Hurd, 2-107; J. S. Wright, 2-142; Brant, 2-215; Bonesteel, 2-330; D. Craig, 3-100; McBrien, 3-345; Bromley & Co., 3-668; Richards, 4-98; Clark et al., 4-237; Vogel, 5-393.

#### 215. EXAMINATION AND FEES OF WITNESSES.

Levy, 1-107; Mawson, 1-271; Fredenburg, 1-268; Griffen, 1-371; Seckendorf, 1-626; Blake, 2-10; Feinburg, 2-425; Beehis & Milligan, 3-199; O'Donohue, 3-245; H. Lewis, 3-621; Woodward & Woodward, 3-719; Belden & Hooker, 4-194; Garrison & Markley, 7-246; Pioneer Paper Co., 7-250; Stuyvesant Bank, 7-445.

he was unable to procure her attendance.<sup>216</sup>

SEC. 5089.—If the bankrupt is imprisoned, absent, or disabled from attendance, the court may order him to be produced by the jailer or any officer in whose custody he may be, or may direct the examination to be had, taken, and certified, at such time and place and in such manner as the court may deem proper, and with like effect as if such examination had been had in court.

SEC. 5090.—If the debtor dies after the issuing of the warrant, the proceedings may be continued and concluded in like manner as if he had lived.<sup>217</sup>

SEC. 5091.—All creditors whose debts are duly proved and allowed shall be entitled to share in the bankrupt's property and estate, *pro rata*, without any priority or preference whatever, except as allowed by Sec. 5101. No debt proved by any person liable as bail, surety, guarantor, or otherwise, for the bankrupt, shall be paid to the person so proving the same, until satisfactory evidence shall be produced of the payment of such debt by such person so liable, and the share to which such debt would be entitled may be paid into court, or otherwise held for the bene-

fit of the party entitled thereto, as the court may direct.<sup>218</sup>

SEC. 5092.—At the expiration of three months from the date of the adjudication of bankruptcy in any case, or as much earlier as the court may direct, the court, upon request of the assignee, shall call a general meeting of the creditors, of which due notice shall be given, and the assignee shall then report and exhibit to the court and to the creditors just and true accounts of all his receipts and payments, verified by his oath, and he shall also produce and file vouchers for all payments for which vouchers are required by any rule of the court; he shall also submit the schedule of the bankrupt's creditors and property as amended, duly verified by the bankrupt, and a statement of the whole estate of the bankrupt as then ascertained, of the property recovered and of the property outstanding, specifying the cause of its being outstanding, and showing what debts or claims are yet undetermined, and what sum remains in his hands. The majority in value of the creditors present shall determine whether any and what part of the net proceeds of the estate, after deducting and retaining a sum sufficient to provide for all undetermined claims which, by reason of the distant residence of the creditor, or for other sufficient rea-

#### 216. WIFE OF BANKRUPT.

Selig, 1-186; Griffin, 1-371; Van Tuyl, 2-70; Bigelow et al., 2-556; Gilbert, 3-152; Bealis v. Milligan, 3-270; Woolford, 3-444; Clark et al., 4-287; Craig, 4-50; Tenney & Gregory v. Collins, 4-477; Blanding, 5-39; Sedgwick v. Place et al., 5-168.

#### 217. OTHERWISE IF BEFORE ADJUDICATION.

O'Farrell, 2-484; Guinike, 4-92; Karr v. Whitaker, 5-123; Hunt v. Pooke, 5-161; John v. McDonald, 8-237; G. C. Litchfield, 9-506.

#### 218. STATE LAWS.

Bryne, 1-464; Erwin & Hardee, 3-580; Six-Penny S'gs Bank v. Stuyvesant, 6-399.

son, have not been proved, and for other expenses and contingencies, shall be divided among the creditors; but unless at least one-half in value of the creditors attend the meeting, either in person or by attorney, it shall be the duty of the assignee so to determine.<sup>219</sup>

SEC. 5093.—Like proceedings shall be had at the expiration of the next three months, or earlier if practicable, and a third meeting of creditors shall then be called by the court, and a final dividend then declared, unless any suit at law or in equity is pending, or unless some other estate or effects of the debtor afterwards come to the hands of the assignee, in which case the assignee shall, as soon as may be, convert such estate or effects into money, and within two months after the same shall be so converted, they shall be divided in manner aforesaid. Further dividends shall be made in like manner as often as occasion requires; and after the third meeting of creditors, no further meeting shall be called unless ordered by the court.<sup>220</sup>

SEC. 5094.—The assignee shall give

---

#### 219. SECOND AND THIRD MEETINGS.

John Bellamy, 1-96; Dean, 1-249; Low, 1-310; Littlefield, 3-57; Clark v. Bininger, 6-204; Abraham B. Clark, 9-67; Hubbell & Chappel, 9-523.

#### 220. REGISTER'S DUTY.

New York Mail Steamship Co., 3-280; Bushey, 3-685; Clark & Bininger, 6-193; Clark, 9-67.

such notice to all known creditors, by mail or otherwise, of all meetings, after the first, as may be ordered by the court.<sup>221</sup>

SEC. 5095.—Any creditor may act at all meetings by his duly constituted attorney the same as though personally present.<sup>222</sup>

SEC. 5096.—Preparatory to the final dividend, the assignee shall submit his account to the court and file the same, and give notice to the creditors of such filing, and shall also give notice that he will apply for a settlement of his account, and for a discharge from all liability as assignee, at a time to be specified in such notice, and at such time the court shall audit and pass the accounts of the assignee, and the assignee shall, if required by the court, be examined as to the truth of his account, and if it is found correct he shall thereby be discharged from all liability as assignee to any creditor of the bankrupt. The court shall thereupon order a dividend of the estate and effects, or of such part thereof as it sees fit, among such of the creditors as have proved their

---

#### 221. NOTICE TO CREDITORS.

Bushey, 3-685.

#### 222. POWER OF ATTORNEY.

W. D. Hill, 1-16; Knoepfel, 1-23; Purvis, 1-163; Phelps, Caldwell & Co., 1-525; Powell, 2-45; Barrett, 2-533; Ulrich, 3-133; C. A. Palmer, 3-301; Weeks, 4-364; Ala. R. R. Co. v. Jones, 5-97; W. C. Christley, 10-268.

claims, in proportion to the respective amount of their debts."<sup>223</sup>

SEC. 5097.—No dividend already declared shall be disturbed by reason of debts being subsequently proved, but the creditors proving such debts shall be entitled to a dividend equal to those already received by the other creditors before any further payment is made to the latter."<sup>224</sup>

SEC. 5098.—If, by accident, mistake, or other cause, without fault of the assignee, either or both of the second and third meetings should not be held within the times limited, the court may, upon motion of an interested party, order such meetings, with like effect as to the validity of the proceedings as if the meeting had been duly held.

SEC. 5099.—The assignee shall be allowed, and may retain out of money in his hands, all the necessary dis-

bursements made by him in the discharge of his duty, and a reasonable compensation for his services, in the discretion of the court."<sup>225</sup> <sup>226</sup>

SEC. 5100.—In addition to all expenses necessarily incurred by him in the execution of his trust, in any case, the assignee shall be entitled to an allowance for his services in such case on all moneys received and paid out by him therein, for any sum not exceeding one thousand dollars, five per centum thereon; for any larger sum, not exceeding five thousand dollars, two and a half per centum on the excess over one thousand dollars; and for any larger sum, one per centum on the excess over five thousand dollars. If, at any time, there is not in his hands a sufficient amount of money to defray the necessary expenses required for the further execution of his trust, he shall not be obliged to proceed therein until the necessary funds are advanced or satisfactorily secured to him."<sup>227</sup>

---

#### 223. AUDITING ASSIGNEE'S ACCOUNT.

Bellamy, 1-64; Dean, 1-249; Haynes, 2-227; Hoyt, 3-55; Lathrop, 5-43; Clark, 9-67; Cohner v. Express Co., 9-138.

#### 224. RIGHTS OF CREDITORS WHO HAVE NOT PROVED.

New York Mail Steamship Co., 3-280.

#### 225. PRACTICE IN.

Huges, 1-226; Dean, 1-249; Noakes, 6-592; B. B. Noyes, 6-277.

---

#### 226. WHAT ALLOWED.

Walton, 1-557; Appold, 1-621; Williams, 2-229; Foster v. Ames, 2-455; N. Y. Mail S. S. Co., 2-554; Fortune, 2-662; Davenport, 3-77; Pegues, 3-80; Tulley, 3-82; Merrifield, 3-98; Walker v. Barton, 3-265; Gregg, 3-529; Downing, 3-741; Laurie, 4-32; McGrath v. Hunt, 5-254; Warshing, 5-350; Nounnan & Co., 6-579; J. C. Mitchell, 8-47; Sweet, 9-48; Geo. S. Ward, 9-349; Jones, 9-491.

#### 227. COMMISSIONS.

Hughes, 1-226; Dean, 1-249; Loder Bros., 2-517; Davenport, 3-77; Sacchi, 6-497.



**SEC. 5101.**—In the order for a dividend, the following claims shall be entitled to priority, and to be first paid in full, in the following order:

*First.* The fees, costs, and expenses of suits, and of the several proceedings in bankruptcy under this title, and for the custody of property, as herein provided.<sup>228 229</sup>

*Second.* All debts due to the United States, and all taxes and assessments under the laws thereof.

*Third.* All debts due to the State in which the proceedings in bankruptcy are pending, and all taxes and assessments made under the laws thereof.

*Fourth.* Wages due to any operative, clerk, or house-servant, to an amount not exceeding fifty dollars, for labor performed within six months next preceding the first publication of the notice of proceedings in bankruptcy.

*Fifth.* All debts due to any persons who, by the laws of the United States, are, or may be, entitled to a priority, in like manner as if the provisions of this title had not been adopted. But nothing contained in this title shall interfere with the assessment and collection of taxes by

the authority of the United States or any State.<sup>230</sup>

**SEC. 5102.**—Whenever a dividend is ordered, the Register shall, within ten days after the meeting, prepare a list of creditors entitled to dividend, and shall calculate and set opposite to the name of each creditor who has proved his claim the dividend to which he is entitled out of the net proceeds of the estate set apart for dividend, and shall forward, by mail, to every creditor a statement of the dividend to which he is entitled, and such creditor shall be paid by the assignee in such manner as the court may direct.<sup>231</sup>

**SEC. 5103.**—If at the first meeting of creditors, or at any meeting of creditors, specially called for that purpose, and of which previous notice shall have been given for such length of time and in such manner as the court may direct, three-fourths in value of the creditors whose claims have been proved shall resolve that it is for the interest of the general body of the creditors that the estate of the bankrupt shall be settled by trustees, under the in-

## 228. COSTS AND EXPENSES IN VOLUNTARY BANKRUPTCY.

Anonymous, 1-123; Hirschberg, 1-642; Gordon, McMillan & Co. v. Scott & Allen, 2-86; Hambright, 2-498; Whitehead, 2-599; Rosenberg, 3-73; Davenport, 3-77; Jaycox & Green, 7-140.

## 229. IN INVOLUNTARY BANKRUPTCY.

D. Williams, 2-83; Waite & Crocker, 2-452; Schwab, 2-488; N. Y. Mail S. S. Co., 2-552; Mittledorfer, 3-1; Montgomery, 3-426; Diblee, 3-754; Sanger & Scott, 5-54; Comstock & Young, 5-191;

Eugene Comstock, 9-88; George S. Ward, 9-349; Jones, 9-491.

## 230. ORDER OF DISTRIBUTION.

Brand, 3-324; S. Brown, 3-720; Harthorn, 4-103; Louis H. Rosey, 8-509; Stokes v. State, 9-191; Stuyvesant Bank, 9-318; Wm. McConnell, 9-387; U. S. v. Herron, 9-525.

## 231. DIVIDEND WARRANT.

Anon., 1-219; Dean, 1-249.



spection and direction of a committee of the creditors, the creditors may certify and report such resolution to the court, and may nominate one or more trustees to take and hold and distribute the estate, under the direction of such committee. If it appears, after hearing the bankrupt and such creditors as desire to be heard, that the resolution was duly passed, and that the interests of the creditors will be promoted thereby, the court shall confirm it; and upon the execution and filing, by or on behalf of three-fourths in value of all the creditors whose claims have been proved, of a consent that the estate of the bankrupt shall be wound up and settled by trustees according to the terms of such resolution, the bankrupt, or, if an assignee has been appointed, the assignee shall, under the direction of the court, and under oath, convey, transfer, and deliver all the property and estate of the bankrupt to the trustees, who shall, upon such conveyance and transfer, have and hold the same in the same manner, and with the same powers and rights, in all respects, as the bankrupt would have had or held the same if no proceedings in bankruptcy had been taken, or as the assignee in bankruptcy would have done had such resolution not been passed. Such consent and the proceedings under it shall be as binding in all respects on any creditor whose debt is provable, who has not signed the same, as if he had signed it, and on any creditor whose debt, if provable, is not proved, as if he had proved it. The court, by order, shall direct all acts and things needful to be done to carry into effect such resolution of the creditors, and the trustees shall proceed to wind up and settle the estate under the direction and inspection of such committee of the creditors, for the equal benefit of all such creditors; and the winding up and settlement of any estate under the provisions of this section shall be deemed to be proceedings in bankruptcy; and the trustees shall have all the rights and powers of assignees in bankruptcy. The court, on the application of such trustees, shall have power to summon and examine, on oath or otherwise, the bankrupt or any creditor, or any person indebted to the estate, or known or suspected of having any of the estate in his possession, or any other person whose examination may be material or necessary to aid the trustees in the execution of their trust, and to compel the attendance of such persons and the production of books and papers in the same manner as in other proceedings in bankruptcy; and the bankrupt shall have the like right to apply for and obtain a discharge after the passage of such resolution and the appointment of such trustees as if such resolution had not been passed, and as if all the proceedings had continued in the manner provided in the preceding sections of this title. If the resolution is not duly reported, or the consent of the creditors is not duly filed, or if, upon its filing, the court does not think fit to approve thereof, the bankruptcy shall proceed as if no resolution had been passed, and the court may make all necessary orders for resuming the proceedings. And the period of time which shall have elapsed between the date of the resolution and the date of the order for resuming proceedings shall not be reckoned in

calculating periods of time prescribed by this title.<sup>232</sup>

SEC. 5103 (A).—That in all cases of bankruptcy now pending or to be hereafter pending by or against any person, whether an adjudication in bankruptcy shall have been had or not, the creditors of such alleged bankrupt may, at a meeting called under the direction of the court, and upon not less than ten days' notice to each known creditor, of the time, place, and purpose of such meeting, such notice to be personal or otherwise, as the court may direct, resolve that a composition proposed by the debtor shall be accepted in satisfaction of the debts due to them from the debtor. And such resolution shall, to be operative, have been passed by a majority in number and three-fourths in value of the creditors of the debtor assembled at such meeting, either in person or by proxy, and shall be confirmed by the signatures thereto of the debtor and two-thirds in number and one-half in value of all the creditors of the debtor. And in calculating a majority for the purposes of a composition under this section, creditors whose debts amount to sums not exceeding fifty dollars, shall be reckoned in the majority in value, but not in the majority in number; and the value of the debts of secured creditors above the amount of such security, to be determined by the court, shall, as nearly as circumstances admit, be es-

timated in the same way. And creditors whose debts are fully secured shall not be entitled to vote upon or to sign such resolution without first relinquishing such security for the benefit of the estate.

The debtor, unless prevented by sickness or other cause satisfactory to such meeting, shall be present at the same, and shall answer any inquiries made of him; and he, or if he is so prevented from being at such meeting, some one in his behalf, shall produce to the meeting a statement showing the whole of his assets and debts, and the names and addresses of the creditors to whom such debts, respectively, are due.

Such resolution, together with the statement of the debtor as to his assets and debts, shall be presented to the court; and the court shall, upon notice to all the creditors of the debtor of not less than five days, and upon hearing, inquire whether such resolution has been passed in the manner directed in this section; and if satisfied that it has been so passed, it shall, subject to the provisions hereinafter contained, and upon being satisfied that the same is for the best interest of all concerned, cause such resolution to be recorded and statement of assets and debts to be filed; and until such record and filing shall have taken place, such resolution shall be of no validity. And any creditor of the debtor may inspect such record and statement at all reasonable times.

### 232. ARRANGEMENT.

Jones, 2-59; Williams, 2-229; Stilwell, 2-526; Dibblee, 3-72; American Water-Proof Cloth Co., 3-285; Darby, 4-211;

Darby, 4-309; Zinn, 4-370; Bakewell, 4-619; Stuyvesant Bank, 6-272; Platt v. Archer, 6-465; Theo. H. Vetterlein, 6-518; Trowbridge, 9-274; Mendenhall, 9-380; Jay Cooke & Co., 10-126; Treat, 10-310.

The creditors may, by resolution passed in the manner and under the circumstances aforesaid, add to or vary the provisions of any composition previously accepted by them, without prejudice to any persons taking interests under such provisions who do not assent to such addition or variation. And any such additional resolution shall be presented to the court in the same manner and proceeded with in the same way and with the same consequences as the resolution by which the composition was accepted in the first instance. The provisions of a composition accepted by such resolution in pursuance of this section, shall be binding on all the creditors whose names and addresses and the amounts of the debts due to whom are shown in the statement of the debtor produced at the meeting at which the resolution shall have been passed, but shall not affect or prejudice the rights of any other creditors.

Where a debt arises on a bill of exchange or promissory note, if the debtor shall be ignorant of the holder of any such bill of exchange or promissory note, he shall be required to state the amount of such bill or note, the date on which it falls due, the name of the acceptor and of the person to whom it is payable, and any other particulars within his knowledge respecting the same; and the insertion of such particulars shall be deemed a sufficient description by the debtor in respect to such debt.

Any mistake made inadvertently by a debtor in the statement of his debts, may be corrected upon reasonable notice, and with the consent

of a general meeting of his creditors.

Every such composition shall, subject to priorities declared in said act, provide for a *pro rata* payment or satisfaction in money, to the creditors of such debtor, in proportion to the amount of their unsecured debts, or their debts in respect to which any such security shall have been duly surrendered and given up.

The provisions of any composition made in pursuance of this section, may be enforced by the court on motion made in a summary manner by any person interested, and on reasonable notice; and any disobedience of the order of the court, made on such motion, shall be deemed to be a contempt of court. Rules and regulations of court may be made in relation to proceedings of composition herein provided for in the same manner and to the same extent as now provided by law in relation to proceedings in bankruptcy.

If it shall at any time appear to the court, on notice, satisfactory evidence, and hearing, that a composition under this section cannot, in consequence of legal difficulties, or for any sufficient cause, proceed without injustice or undue delay to the creditors or to the debtor, the court may refuse to accept and confirm such composition, or may set the same aside; and, in either case, the debtor shall be proceeded with as a bankrupt in conformity with the provisions of law, and proceedings may be had accordingly; and the time during which such composition shall have been in force shall not, in such case, be computed in calculating periods of time prescribed by said act.

## CHAPTER V.

## PROTECTION AND DISCHARGE OF BANKRUPTS.

SEC. 5104.—BANKRUPT SUBJECT TO ORDERS OF COURT.

SEC. 5105.—WAIVER OF SUIT BY PROOF OF DEBT.

SEC. 5106.—STAY OF SUITS.

SEC. 5107.—EXEMPTION FROM ARREST.

SEC. 5108.—APPLICATION FOR DISCHARGE.

SEC. 5109.—NOTICE TO CREDITORS.

SEC. 5110.—GROUNDS FOR OPPOSING DISCHARGE.

SEC. 5111.—SPECIFICATION OF GROUNDS OF OPPOSITION.

SEC. 5112.—ASSETS EQUAL TO THIRTY PER CENTUM REQUIRED.

SEC. 5113.—FINAL OATH OF BANKRUPT.

SEC. 5114.—COURT TO GRANT DISCHARGE.

SEC. 5115.—FORM OF CERTIFICATE OF DISCHARGE.

SEC. 5116.—SECOND BANKRUPTCY.

SEC. 5117.—CERTAIN DEBTS NOT RELEASED.

SEC. 5118.—LIABILITY OF OTHER PERSONS NOT RELEASED.

SEC. 5119.—EFFECT OF DISCHARGE.

SEC. 5120.—APPLICATION TO ANNUL DISCHARGE.

SEC. 5104.—The bankrupt shall at all times, until his discharge, be subject to the order of the court,<sup>233</sup> and shall, at the expense of the estate, execute all proper writings and instruments, and do all acts required by the court touching the assigned property or estate, and to enable the assignee to demand, recover, and receive all the property and estate assigned, wherever situated. For neglect or refusal to obey any order of the court, the bankrupt may be committed and punished as for a contempt of court. If the bankrupt is without the district and unable to return and personally attend at any of the times or do any of the acts which may be required pursuant to this section,

and if it appears that such absence was not caused by willful default, and if, as soon as may be after the removal of such impediment, he offers to attend and submit to the order of the court in all respects, he shall be permitted so to do, with like effect as if he had not been in default.

SEC. 5105.—No creditor proving his debt or claim shall be allowed to maintain any suit at law or in equity therefor against the bankrupt, but shall be deemed to have waived all right of action against him, and all proceedings already commenced or unsatisfied judgments already obtained thereon against the bankrupt,

233. CONTROL OF COURT OVER BANKRUPT.  
Carpenter, 1-299; Clark & Bininger,

3-491; Bromley & Co., 3-686; W. H. Pier-  
son, 10-194; Witkowski, 10-209.

shall be deemed to be discharged and surrendered thereby. But a creditor proving his debt or claim shall not be held to have waived his right of action or suit against the bankrupt where a discharge has been refused or the proceedings have been determined without a discharge.<sup>224</sup>

SEC. 5106.—No creditor whose debt is provable shall be allowed to prosecute to final judgment any suit at law or in equity therefor against the bankrupt until the question of the debtor's discharge shall have been determined; and any such suit or proceedings shall, upon the application of the bankrupt, be stayed to await the determination of the court in bankruptcy on the question of the discharge, provided there is no unreasonable delay on the part of the bankrupt in endeavoring to obtain his discharge, and provided, also, that if the amount due the creditor is in dispute, the suit, by leave of the

court in bankruptcy, may proceed to judgment for the purpose of ascertaining the amount due, which amount may be proved in bankruptcy, but execution shall be stayed.<sup>225</sup>

SEC. 5107.—No bankrupt shall be liable during the pendency of the proceedings in bankruptcy to arrest in any civil action, unless the same is founded on some debt or claim from which his discharge in bankruptcy would not release him.<sup>226</sup>

SEC. 5108.—At any time after the expiration of six months from the adjudication of bankruptcy, or if no debts have been proved against the bankrupt, or if no assets have come to the hands of the assignee at any time after the expiration of sixty days and within one year from the adjudication of bankruptcy, the bankrupt may apply to the court for a discharge from his debts.<sup>227</sup>

#### 234. EFFECT OF PROOF ON SUITS AGAINST BANKRUPT.

J. S. Wright, 2-142; Rosenberg, 2-236; W. E. Robinson, 2-342; Migel, 2-481; Samson v. Burton, 4-1; Hoyt v. Freel, 4-131; Allen v. Soldiers' Business Messenger and Dispatch Co., 4-537; Wilson & Capuro, 4-714; Dingee v. Becker, 9-508.

#### 235. STAYING SUITS PENDING BANKRUPTCY PROCEEDINGS.

Reed, 1-1; Seymour, 1-29; Jacoby, 1-118; Metcalf, 1-201; Meyers, 1-581; Hirsch, 2-3; Rundle, 2-113; Richardson, 2-202; Rosenberg, 2-236; Fallon, 2-277; Migel, 2-481; Thomas, 3-38; World Co. v. Brooks, 3-588; Bromley & Co., 3-686; Samson v. Burton, 4-1; Minon v. Van

Nostrand, 4-108; Hoyt v. Freel, 4-131; Ghiradelli, 4-164; Maxwell v. Faxton, 4-210; Merritt v. Glidden, 5-157; W. Belden, 6-443; Hennocksburg & Block, 7-37; Meyer v. Aurora Ins. Co., 7-191; Dingee & Becker, 9-508; Penny v. Taylor, 10-200; Allen & Co. v. Montgomery, 10-503.

#### 236. ARREST OF DEBTOR PENDING PROCEEDINGS IN BANKRUPTCY.

Seymour, 1-29; G. W. Kimball, 1-193; Patterson, 1-307; W. A. Walker, 1-318; L. Glaser, 1-336; Devoe, 2-27; Hazelton v. Valentine, 2-81; Pettis, 2-44; Simpson, 2-47; Borst, 2-171; J. H. Kimball, 2-204; W. E. Robinson, 2-342; Migel, 2-481; Valk, 3-278; Minon v. Van Nostrand, 4-108; Horter v. Harlan, 7-238; Nathaniel Dole, 7-538.

SEC. 5109.—Upon application for a discharge being made, the court shall order notice to be given by mail to all creditors who have proved their debts, and by publication at least once a week in such newspapers as the court shall designate, due regard being had to the general circulation of the same in the district or in that portion of the district in which the

bankrupt and his creditors shall reside, to appear on a day appointed for that purpose, and show cause why a discharge should not be granted to the bankrupt."<sup>3</sup>

SEC. 5110.—No discharge shall be granted,"<sup>3</sup> or, if granted, shall be valid in any of the following cases:

*First.* If the bankrupt has will-

### 237. APPLICATION FOR DISCHARGE.

Bellamy, 1-64; Hughes, 1-226; Dodge, 1-435; B. W. & J. H. Woolums, 1-496; Willmott, 2-214; Greenfield, 2-298; Bodenham, 2-419; Lang, 2-480; Martin, 2-548; Canaday, 3-11; S. D. Clark, 3-16; Solis, 3-761; Bunster, 5-82; Schenck, 5-93; Farrell, 5-125; Gallison, 5-353; James M. Seabury, Jr., 10-90; Wm. H. Pierson, 10-107; Pierson, 10-194; S. S. Houghton, 10-337; J. Francke, 10-488; Perkins et al., 10-529; King, 10-566.

### 238. NOTICE OF APPLICATION.

Bellamy, 1-64, 96, 113; McIntire, 1-151; Townsend, 1-216; Anon., 1-219; Gettle-son, 1-604; Blaisdell, 6-78.

### 239. WHEN DISCHARGE NOT GRANTED.

Adolph Baum, 1-5; W. D. Hill, 1-16, 431; Bellamy, 1-64, 96, 113; Robert C. Rathbone, 1-294; Alfred Beardsley, 1-304; Robert C. Rathbone, 1-324, 536; Oliver W. Dodge, 1-435; Chas. H. McIntire, 1-151, 436; George S. Mawson, 1-437; Alfred Beardsley, 1-457; B. W. & J. H. Woolums, 1-496; Darius Tallman, 1-540; Geo. S. Mawson, 1-548; Isaac Rosenfield, 1-575; Bashford, 2-73; Warren C. Abbe, 2-75; Clarke, 2-110; Rosenfield, Jr., 2-116; Bontelle, 2-129; Doody, 2-201; Stokes,

2-212; Willmott, 2-214; Sidle, 2-220; Brisco, 2-226; Bidwell, 2-229; Brodhead, 2-278; W. Wyatt, 2-288; Little, 2-294; Tracy, 2-298; Thompson Greenfield, 2-311; Simon Bodenham & Jacob Adler, 2-419; J. H. B. Lang, 2-480; O'Farrel, 2-484; W. Billing, 2-512; Martin, 2-548; Schuyler, 2-549; Beatty, 2-582; Hollensshade, 2-651; Clark, 3-16; Littlefield, 3-57; Eidom, 3-106; Canady, 3-110; Murdock, 3-146; Burgess, 3-196; Sohoo, 3-215; Pierce & Holbrook, 3-258; Burk, 3-296; Palmer, 3-301; Connell, 3-443; Goodfellow, 3-452; Adams, 3-561; Rogers, 3-564; Penn, 3-582; Strachan, 3-601; Perkins v. Gay, 3-772; Doyle, 3-782; John Maxwell Mackay, 4-67; Gunike, a deceased bankrupt, 4-92; Tyler, 4-103; O'Dell v. Wootten, 4-183; Loder, 4-190; Rockwell and Woodruff, 4-243; Keefer, 4-389; Thos. J. Hunt et al. v. David H. Taylor et al., 4-683; Smith & Beckford, 5-20; Bunster, 5-82; Schenck, 5-93; Leighton, 5-95; S. F. & C. S. Frie-zelle, 5-119; Borden & Geary, 5-128; Graham, 5-155; Penn & Culvers, 5-288; Warner et al., 5-414; Cretiew, 5-423; Humble & Co. v. Carson, 6-84; G. C. Jones, 6-386; L. Shower, 6-586; Vinton, 7-138; Meyer v. Aurora Ins. Co., 7-191; Lincoln & Cherry, 7-334; Herrick, 7-341; Heath & Hughes, 7-448; Hershman, 7-604; Rob-inson et al. v. Peasant et al., 8-426; Brent, 8-444; Finn, 8-525; Medbury v. Swan, 8-587; Alston v. Robinett, 9-74; Coit v. Robinson, 9-289; Dingee v. Becker, 9-508; Shuman v. Strauss, 10-300; B. Jn. Dusenbury v. Mark Hoyet, 10-313; S. S. Houghton, 10-337; Chas. J. Francke, Jr., & Chas. E. Franke, bkts.,



fully sworn falsely<sup>240</sup> in his affidavit annexed to his petition, schedule, or inventory, or upon any examination in the course of the proceedings in bankruptcy, in relation to any material fact.

*Second.* If the bankrupt has concealed<sup>241</sup> any part of his estate or effects, or any books or writings relating thereto; or has been guilty of any fraud or negligence in the care, custody, or delivery to the assignee of the property belonging to him at the time of the presentation of his petition and inventory, excepting such property as he is permitted to retain under the provisions of this title, or if he has caused, permitted, or suffered any loss, waste, or destruction thereof.<sup>242</sup>

10-488; Perkins et al., 10-529; King, 10-566.

#### 240. FALSE SWEARING.

Beardsley, 1-304; Rathbone, 1-324; Humitsh, 2-12; Pomeroy, 2-14; Wyatt, 2-288; Sidle, 2-220; McVey, 2-257; Rathbone, 2-260; Needham, 2-387; Beatty, 2-582; Robinson, 3-70; Schofield, 3-551; Keefer, 4-389; Smith & Bickford, 5-20; Penn, 5-288; Rainsford, 5-381; Pierson, 10-107.

#### 241. CONCEALMENT OF PROPERTY.

Beardsley, 1-304; Rathbone, 1-324; W. D. Hill, 1-431; Mawson, 1-437; Humitsh, 2-12; Pomeroy, 2-14; O'Bannon, 2-15; Sidle, 2-220; Wyatt, 2-288; Goodridge, 2-324; Hussman, 2-437; Beal, 2-587; Long, 3-66; Eidom, 3-106; Murdock, 3-146; Hammond & Coolidge, 3-273; R. A. Adams, 3-561; Doyle, 3-782; Freeman, 4-64; Rainsford, 5-381; Wm. H. Pierson, 10-107; Beecher v. Clark, 10-385.

*Third.* If, within four months before the commencement of such proceedings, the bankrupt has procured his lands, goods, money, or chattels to be attached, sequestered, or seized on execution.<sup>243</sup>

*Fourth.* If, at any time after the 2d day of March, 1867, the bankrupt has destroyed, mutilated, altered, or falsified any of his books, documents, papers, writings, or securities, or has made or been privy to the making of any false or fraudulent entry in any book of account or other document, with intent to defraud his creditors;<sup>244</sup> or has removed or caused to be removed any part of his property from the district, with intent to defraud his creditors.

*Fifth.* If the bankrupt has given

#### 242. FAILING TO PRESERVE PROPERTY PENDING ELECTION OF ASSIGNEE.

Schnepf, 1-190; Jones v. Leach, 1-595; Rosenfield, 2-117; Wallace, 2-134; March v. Heaton, 2-180; Long, 3-66; Eidom, 3-106; Rogers, 3-564; Dresser, 3-557; Enoch Steadman, 8-319; Michael Finn, 8-525; Wm. H. Pierson, 10-107.

#### 243. SUFFERING PROPERTY TO BE TAKEN.

Julius Schick, 1-177; Black & Secor, 1-353; Wallace v. Conrad, 3-41; Wells, 3-371; Davidson, 3-418; Campbell, assign., v. Nat. Bank, 3-498; Hardy, Blake & Co. v. Bininger & Co., 4-262; Beattie, assign. of Morse, v. Gardner et al., 4-323; Smith v. Buchanan et al., 4-397; Kohlsaat v. Hoguet, 5-159; Wood, 7-126; Forsyth & Murtha, 7-174; Cox v. Hale, 8-562; Wilson v. City Bank of St. Paul, 9-97; Dwight B. King, 10-103.

#### 244. FALSE ENTRIES.

Wm. H. Pierson, 10-107.



any fraudulent preference<sup>346</sup> contrary to the provisions of the Act of March two, 1867, to establish a uniform system of bankruptcy, or to the provisions of this title, or has made any fraudulent payment, gift, transfer,<sup>347</sup> conveyance, or assignment of any part of his property, or has lost any part thereof in gaming,<sup>348</sup> or has admitted a false or fictitious debt against his estate.

*Sixth.* If the bankrupt, having knowledge that any person has proved such false or fictitious debt,<sup>349</sup> has not disclosed the same to his assignee within one month after such knowledge.

*Seventh.* If the bankrupt, being a merchant or tradesman, has not, at all times after the 2d day of March, 1867, kept proper books of account.<sup>350</sup>

*Eighth.* If the bankrupt, or any person in his behalf, has procured the assent<sup>351</sup> of any creditor to the discharge, or influenced the action of any creditor at any stage of the proceedings, by any pecuniary consideration or obligation.

*Ninth.* If the bankrupt has, in contemplation<sup>352</sup> of becoming bankrupt, made any pledge, payment, transfer, assignment, or conveyance of any part of his property, directly or indirectly, absolutely or conditionally, for the purpose of preferring any creditor or person having a claim against him, or who is or may be under liability for him, or for the purpose of preventing the property from coming into the hands of the assignee, or of being distributed in satisfaction of his debts.<sup>353</sup>

*Tenth.* If the bankrupt has been

#### 245. FRAUDULENT PREFERENCES.

Rosenfield, 1-575 ; Sidle, 2-220 ; Foster, 2-232 ; Locke, 2-382 ; Gay, 2-358 ; Louis, 2-449 ; Batchelder, 3-150 ; Burgess, 3-196 ; L. J. Doyle, 3-640 ; Freeman, 4-68 ; Smith v. Bickford, 5-20 ; Warner, 5-414 ; Brent, 8-444 ; Michael Finn, 8-525 ; Wm. H. Pierson, 10-107.

#### 246. FRAUDULENT TRANSFERS.

Jorey & Sons, 2-668 ; Keefer, 4-889 ; Cretiew, 5-423 ; Harrison v. McLaren, 10-244.

#### 247. GAMING.

Marshall, 4-106.

#### 248. FICTITIOUS DEBTS.

Orcutt, 4-538.

#### 249. BOOKS OF ACCOUNT.

Rosenfield, 1-575 ; O'Bannon, 2-15 ; Solomon, 2-285 ; Newman, 2-302 ; Gay, 2-358 ; White, 2-590 ; Jorey & Sons, 2-668 ; Keach,

3-13 ; Littlefield, 3-57 ; Batchelder, 3-150 ; Burgess, 3-196 ; Nounnan & Connolly, 3-267 ; Hammond v. Coolidge, 3-273 ; Belis & Milligan, 3-496 ; Rogers, 3-564 ; J. M. Mackay, 4-66 ; Tyler, 4-104 ; Bound, 4-510 ; Edward Garrison, 7-287 ; W. E. Brockway, 7-595 ; Schumpert, 8-415 ; Mendenhall, 9-285 ; Wm. H. Pierson, 10-107.

#### 250. ASSENT OF CREDITOR TO DISCHARGE.

Mawson, 1-437 ; Freeman, 4-64.

#### 251. TRANSFERS IN CONTEMPLATION OF BECOMING BANKRUPT.

Brodhead, 2-278 ; Goldschmidt, 3-165 ; Pierce & Holbrook, 3-258 ; Hammond v. Coolidge, 3-273 ; Freeman, 4-64 ; Keefer, 4-889 ; Cretiew, 5-423 ; Wm. H. Pierson, 10-107.

#### 252. FRAUD.

Louis Meyers, 1-581 ; Wright & Peckham, 2-41 ; Pettis, 2-44 ; Henry W. Bash-

convicted of any misdemeanor under this title.<sup>253 254 255</sup>

SEC. 5111.—Any creditor opposing the discharge of any bankrupt may file a specification<sup>256</sup> in writing of the grounds of his opposition,<sup>257</sup> and the court may, in its discretion, order any question of fact so presented to be tried at a stated session of the District Court.<sup>258</sup>

SEC. 5112.—That in cases of compulsory or involuntary bankruptcy, the provisions of said act and any amendment thereof or of any supple-

ment thereto requiring the payment of any proportion of the debts of the bankrupt or the assent of any portion of his creditors as a condition of his discharge from his debts, shall not apply; but he may, if otherwise entitled thereto, be discharged by the court in the same manner and with the same effect as if he had paid such per centum of his debts, or as if the required proportion of his creditors had assented thereto. And, in cases of voluntary bankruptcy, no discharge shall be granted to a debtor whose assets shall not be equal to thirty per centum of the claims proved against

ford, 2-73; Edwin B. Dean & Thomas F. Garrett, 2-89; John S. Wright, 2-142; Stokes, 2-212; Robinson, 2-342; Lathrop et al., 3-410; Martin, assig., &c., v. Smith et al., 4-274; Curran et al. v. Munger et al., 6-83; Pratt, Jr., v. Curtis et al., 6-139; E. R. Stephens, 6-533; Horter et al. v. Harlan, 7-238; King, 8-285; Purviance, assig., v. Union Nat. Bank of Pittsburgh, 8-447; Stewart v. Emerson, 8-462; Sedgwick v. Place, 10-29; G. H. Lane & Co., 10-135; Shuman v. Strauss, 10-300; Brooke v. McCracken, 10-461; Allen & Co. v. Montgomery, 10-503.

#### 253. MISDEMEANORS.

United States v. Hugh Clark, 4-59; United States v. Prescott et al., 4-112; United States v. Geary, 4-534.

#### 254. LIMITATION.

Rosenfield, 1-575; Hussman, 2-437; Hollensshade, 2-651; Burk, 3-296; Scofield, 3-551; Cretiew, 5-423.

#### 255. REMOVAL FROM DISTRICT.

Hammond & Coolidge, 3-273.

#### 256. FILING SPECIFICATIONS.

Baum, 1-5; W. D. Hill, 1-16; Bellamy, 1-96; Mawson, 1-265; Thompson, 1-323;

Levy, 1-327; Sheppard, 1-439; Tallman, 1-540; Seckendorf, 1-626; Puffer, 2-48; Boutelle, 2-129; Brisco, 2-226; McVey, 2-257; Grefe, 2-329; W. E. Robinson, 2-342; Murdock, 3-146; Burk, 3-296; C. N. Palmer, 3-301; Creditors v. Williams, 4-580; Smith v. Bickford, 5-20; Frizelle, 5-119; Gallison, 5-358; James A. Seabury, 10-90.

#### 257. WHAT THEY MUST AVER.

W. D. Hill, 1-275; Rathbone, 1-294, 324; Beardsley, 1-304; Son, 1-310; Mawson, 1-437; Rosenfield, 2-116; Tyrrell, 2-200; Hansen, 2-211; Dreyer, 2-212; Pulver, 2-318; W. C. McVey, 2-257; Goodridge, 2-324; Robinson v. Chamberlain, 3-70; Eidom, 3-106; Burk, 3-296; Bellis & Milligan, 3-496; Keefer, 4-389; Tenny, & Gregory v. Collins, 4-477; Smith v. Bickford, 5-20.

#### 258. HOW TRIED.

W. D. Hill, 1-275; Mawson, 1-548; Gordon, McMillan & Co. v. Scott & Allen, 2-86; Okell, 2-105; Lawson, 2-113; Rosenfield, 2-117; McVey, 2-257; Schuyler, 2-549; Lathrop, Luddington & Co., 346; Eidom, 3-160; Burgess, 3-196; Scheo, 3-215; Nounnan & Connolly, 3-267; Burk, 3-296; P. A. Doyle, 3-782; Olds, 4-146; Penn, 8-93.

his estate, upon which he shall be liable as principal debtor, without the assent of at least one-fourth of his creditors in number and one-third in value.<sup>259 260</sup>

SEC. 5113.—Before any discharge is granted the bankrupt must take and subscribe an oath to the effect that he has not done, suffered, or been privy to any act, matter, or thing specified as a ground for withholding such discharge, or as invalidating such discharge if granted.<sup>261</sup>

SEC. 5114.—If it shall appear to the court that the bankrupt has in all things conformed to his duty under this title, and that he is entitled, under the provisions thereof, to receive a discharge, the court shall grant him a discharge from all his debts except as hereinafter provided, and shall give him a certificate thereof under the seal of the court.<sup>262</sup>

SEC. 5115.—The certificate of a discharge in bankruptcy shall be in substance in the following form:

#### 259. FIFTY PER CENTUM.

Freiderick, 3-465; Webb & Taylor, 3-720; Loder, 4-190; Rockwell v. Woodruff, 4-243; Seay, 4-271; Borden & Geary, 5-128; W. H. Graham, 5-155; Kahley, 6-189; Van Riper, 6-573; Vinton, 7-188; Lincoln & Cherry, 7-334; Schampert, 8-415; Brent, 8-444; W. H. Pierson, 10-193.

#### 260. SINCE AMENDMENT, JUNE, 1874.

Francke, 10-438; Griffith, 10-456; Perkins, 10-529; King, 10-566.

#### 261. FINAL OATH.

Bellamy, 1-96; Pulver, 2-313; Machad, 2-352; O'Farrell, 2-484; Guinike, 4-92; Frizelle, 5-119.

District Court of the United States, District of

Whereas has been duly adjudged a bankrupt under the Revised Statutes of the United States, title "Bankruptcy," and appears to have conformed to all the requirements of law in that behalf, it is therefore ordered by the court that said be forever discharged from all debts and claims which, by said title, are made provable against his estate, and which existed on the day of , on which day the petition for adjudication was filed by (or against) him; excepting such debts, if any, as are by law excepted from the operation of a discharge in bankruptcy.

Given under my hand and the seal of the court at , in the said district, this day of .

(Seal.) , Judge.<sup>263</sup>

SEC. 5116.—No person who has been discharged and afterwards becomes bankrupt on his own application, shall be again entitled to a

#### 262. GROUNDS FOR WITHHOLDING DISCHARGE.

Bellamy, 1-64, 96; Orne, 1-79; Hughes, 1-226; Harris, 2-105; Hall, 2-192; E. Pulver, 2-313; Van Tuyl, 2-579; Bushey, 3-685; Littlefield, 3-57; Strachan, 3-601; Pierce & Holbrook, 3-258; Wilkinson, 3-286; Cornell, 3-443; Creditors v. Williams, 4-580; Wm. H. Pierson, 10-193.

#### 263. CERTIFICATE OF DISCHARGE.

Perkins v. Gay, 3-772; Cory et al. v. Ripley, 4-503; Way v. Howe, 4-677; Hudson v. Bingham, 8-494; Alston v. Robinett, 9-74; Maxwell v. McCune, 10-306; Austin v. Markham, 10-548.

discharge whose estate is insufficient to pay seventy per centum of the debts proved against it, unless the assent in writing of three-fourths in value of his creditors who have proved their claims is filed at or before the time of application for discharge; but a bankrupt who proves to the satisfaction of the court that he has paid all the debts owing by him at the time of any previous bankruptcy, or who has been voluntarily released therefrom by his creditors, shall be entitled to a discharge in the same manner and with the same effect as if he had not previously been bankrupt.

SEC. 5117.—No debt created by the fraud<sup>264</sup> or embezzlement of the bankrupt, or by his defalcation as a public officer, or while acting in any fiduciary character,<sup>265</sup> shall be discharged by proceedings in bank-

ruptcy; but the debt may be proved, and the dividend thereon shall be a payment on account of such debt.

SEC. 5118.—No discharge shall release, discharge, or affect any person liable for the same debt for or with the bankrupt, either as partner,<sup>266</sup> joint contractor, indorser, surety, or otherwise.<sup>267</sup>

SEC. 5119.—A discharge in bankruptcy duly granted shall, subject to the limitations imposed by the two preceding sections, release the bankrupt from all debts, claims, liabilities and demands which were or might have been proved against his estate in bankruptcy. It may be pleaded by a simple averment that, on the day of its date, such discharge was granted to the bankrupt, setting a full copy of the same forth in its

#### 264. FRAUDULENT DEBTS.

Patterson, 1-307; Devoe, 2-27; Whitehouse, 4-63; Stewart & Emerson, 8-462.

#### 265. FIDUCIARY DEBTS.

Seymour, 1-29; J. H. Kimball, 2-204; Cronan v. Cutting, 4-667; Lenke v. Booth, 5-351; Grover & Baker v. Clinton, 8-312; Jones & Cullom v. Knox, 8-559; Haliburton v. Carter, 10-359.

#### 266. PARTNERS.

P. & H. Lewis, 1-239; Walter H. Waite et al., 1-373; Owen Byrne, 1-464; Fredk. Jewett, 1-495; Alex. Frear, 1-660; James L. Fowler, 1-680; Crockett et al., 2-208; Winkens, 2-349; Barrett, 2-533; Weikert & Parker, 3-27; Forsyth v. Merritt, 3-48; Shepard, 3-172; Foster & Pratt, 3-237; Hartough, 3-422; Mitchell et al., 3-441; Scofield, 3-551; Downing, 3-748; Melick,

4-97; Kahley et al., 4-378; Dunkle & Driesbach, 7-107; Ess & Clarendon, 7-138; Bush v. Crawford, assig., 7-299; Withrow v. Fowler, 7-339; Francis & Buchanan, 7-359; Munn, 7-468; Knight, 8-436; Lewis, 8-546; Long & Co., 9-227; Pierson, 10-107; Lane & Co., 10-135; Noonan, 10-330.

#### 267. JOINT LIABILITY.

Levy, 1-327; Cram, 1-504; Ahl et al. v. Thorner, 3-118; Nickodemus, 3-230; Montgomery, 3-426; Downing, 3-748; Odell v. Wootten, 4-183; Loder, 4-190; Payne v. Able, 4-220; Forsyth v. Wood, 5-78; Stevens, 5-112; Ellerhorst & Co., 5-144; Crawford, 5-301; Bean v. Laffin, 5-333; Morrell, 8-117; Jones & Cullom v. Knox, 8-559; Talcott & Souther, 9-502; Holyoke v. Adams, 10-270; Wesley Halliburton v. Calvin T. Carter, 10-359; Perkins et al., 10-529.

terms as a full and complete bar to all suits brought on any such debts, claims, liabilities or demands. The certificate shall be conclusive evidence in favor of such bankrupt of the fact and regularity of such discharge.<sup>268</sup>

**SEC. 5120.**—Any creditor of a bankrupt whose debt was proved or provable against the estate in bankruptcy who desires to contest the validity of the discharge on the ground that it was fraudulently obtained, may, at any time within two years after the date thereof, apply to the court which granted it to annul the same. The application shall be in writing, and shall specify which, in particular, of the several acts mentioned in Sec. 5110 it is intended to prove against the bankrupt, and set forth the grounds of avoidance; and no evidence shall be admitted as to any other of such acts; but the ap-

plication shall be subject to amendment at the discretion of the court. The court shall cause reasonable notice of the application to be given to the bankrupt, and order him to appear and answer the same within such time as to the court shall seem proper. If, upon the hearing of the parties, the court finds that the fraudulent acts, or any of them, set forth by the creditor against the bankrupt are proved, and that the creditor had no knowledge of the same until after the granting of the discharge, judgment shall be given in favor of the creditor, and the discharge of the bankrupt shall be annulled. But if the court finds that the fraudulent acts and all of them so set forth are not proved, or that they were known to the creditor before the granting of the discharge, judgment shall be rendered in favor of the bankrupt, and the validity of his discharge shall not be affected by the proceedings.<sup>269</sup>

---

**268. HOW TO PLEAD, AND EFFECT OF.**

Anon., 1-123; Ray, 1-203; Kingsley, 1-329; Harden, 1-395; Sheppard, 1-439; J. S. Wright, 2-142; J. H. Kimball, 2-204; Sidle, 2-220; Rosenberg, 2-236; Barnes v. Moore, 2-573; Goodfellow, 3-452; Penn, 3-582; Odell v. Wootten, 4-183; Payne v. Able, 4-220; Hunt v. Taylor, 4-683; Burper v. Sparhawk, 4-685; Humble v. Carson, 6-84; Symonds v. Barnes, 6-377; United States v. Throckmorton, 8-309; Robinson v. Pesant, 8-426; Medbury v. Swan, 8-537; Allen v. Ferguson, 9-481; U. S. v. Herron, 9-535; Penny v.

Taylor, 10-200; Morris et al. v. Schwartz, 10-305.

---

**269. IN WHAT COURTS AND HOW ATTACKED.**

McIntire, 1-436; Barnes v. Moore, 2-573; Perkins v. Gay, 3-772; Tenny & Gregory v. Collins, 4-477; Corey v. Ripley, 4-503; Way v. Howe, 4-677; Rainsford, 5-381; Dupee, 6-89; Charles K. Herrick, 7-341; Hudson v. Bingham, 8-494; Alston v. Robinet, 9-74.

## CHAPTER VI

## PROCEEDINGS PECULIAR TO PARTNERSHIPS AND CORPORATIONS.

SEC. 5121.—BANKRUPTCY OF PARTNERSHIPS.

SEC. 5122.—OF CORPORATIONS AND JOINT STOCK COMPANIES.

SEC. 5123.—AUTHORITY OF STATE COURT PROCEEDINGS AGAINST CORPORATIONS.

SEC. 5121.—Where two or more persons who are partners<sup>270</sup> in trade are adjudged bankrupt, either on the petition of such partners, or of any one of them, or on the petition of any creditor of the partners,<sup>271</sup> a warrant shall issue, in the manner provided by this title, upon which all the joint stock and property of the copartnership, and also all the separate estate of each of the partners, shall be taken, excepting such parts thereof as are hereinbefore excepted. All the creditors of the company, and the separate creditors of each partner, may prove their respective debts. The assignee shall

be chosen by the creditors of the company.<sup>272</sup> He shall keep separate accounts of the joint stock or property of the copartnership, and of the separate estate of each member thereof.

And after deducting out of the whole amount received by the assignee, the whole of the expenses and disbursements, the net proceeds of the joint stock shall be appropriated to pay the creditors of the copartnership, and the net proceeds of the separate estate of each partner shall be appropriated to pay his separate creditors.<sup>273</sup> If there is any balance of the separate estate of any

## 270. WHEN LIABLE TO BE ADJUDGED BANKRUPTS.

Waite, 1-373; Crockett et al., 2-208; Sheppard, 3-172; Foster, 3-236; Williams & Co., 3-286; Hartough v. Hayden, 3-422; Mitchell, 3-441; Howard, Cole & Co., 4-571; Stevens, 5-112; Daggett, 8-433; Noonan, 10-330.

## 271. PETITION AGAINST.

Boylan, 1-2; Lewis, 1-239; Prankard, 1-297; Little, 1-341; Abbe, 2-75; Bidwell, 2-229; Winkens, 2-349; Shumate & Blythe v. Hawthorn, 3-227; W. Leland, 5-222.

## 272. ELECTION OF ASSIGNEE.

Phelps, Caldwell & Co., 1-525; Scheiffer

& Garrett, 2-591; Walter P. Long & Co., 9-227.

## 273. DISTRIBUTION OF ASSETS.

Byrne, 1-464; Jewett, 1-491; Frear, 1-660; Forsaith v. Merritt, 3-48; T. S. Sheppard, 3-172; Hinds, 3-351; H. B. Montgomery, 3-374; Downing, 3-748; Melick, 4-97; Kahley, 4-378; Taylor v. Rasch & Bernart, 5-399; Isaacs & Cohn, 6-92; Goedde & Co., 6-295; Withrow v. Fowler, 7-339; Kinkead, 7-439; Knight, 8-436; A. T. Lewis, 8-546; Walter P. Long & Co., 9-227; George Rice, 9-373; G. H. Lane & Co., 10-135; McFarland & Co., 10-381.



partner, after the payment of his separate debts, such balance shall be added to the joint stock for the payment of the joint creditors; and if there is any balance of the joint stock after payment of the joint debts, such balance shall be appropriated to and divided among the separate estates of the several partners, according to their respective right and interest therein, and as it would have been if the partnership had been dissolved without any bankruptcy; and the sum so appropriated to the separate estate of each partner shall be applied to the payment of his separate debts. The certificate of discharge shall be granted or refused to each partner as the same would or ought to be if the proceedings had been against him alone. In all other respects the proceedings against partners shall be conducted in the like manner as if they had been commenced and prosecuted against one person alone. If such copartners reside in different districts, that court in which the petition is first filed shall retain exclusive jurisdiction over the case.<sup>274</sup>

SEC. 5122.—The provisions of this title shall apply to all monied, business, or commercial corporations and joint stock companies, and, upon the petition of any officer of any such corporation or company, duly authorized by a vote of the majority of the corporators at any legal meeting

called for the purpose, or, upon the petition of any creditor of such corporation or company, made and presented in the manner provided in respect to debtors, the like proceedings shall be had and taken as are provided in the case of debtors. All the provisions of this title which apply to the debtor, or set forth his duties in regard to furnishing schedules and inventories, executing papers, submitting to examinations, disclosing, making over, secreting, concealing, conveying, assigning, or paying away his money or property, shall in like manner, and with like force, effect, and penalties, apply to each and every officer of such corporation or company in relation to the same matters concerning the corporation or company, and the money and property thereof. All payments, conveyances and assignments declared fraudulent and void by this title when made by a debtor shall, in like manner, and to the like extent, and with like remedies, be fraudulent and void when made by a corporation or company. Whenever any corporation, by proceedings under this title, is declared bankrupt, all its property and assets shall be distributed to the creditors of such corporation in the manner provided in this title in respect to natural persons. But no allowance or discharge shall be granted to any corporation or joint stock company, or to any person or officer or member thereof.<sup>275</sup>

---

**274. WHERE PARTNERS RESIDE IN DIFFERENT DISTRICTS.**

Boylan, 1-2; M. C. Smith, 1-214; Penn, 5-80; Cameron v. Cameo, 9-527.

---

**275. WHAT CORPORATIONS INCLUDED.**

Rankin & Pullian v. Florida, Atlantic, and G. C. R. R. Co., 1-647; Thornhill v. Bank of Louisiana, 8-485; Lady Bryan

**SEC. 5123.**—Whenever a corporation created by the laws of any State, whose business is carried on wholly within the State creating the same, and also any insurance company so created, whether all its business shall be carried on in such State or not, has had proceedings duly commenced against such corporation or company, before the courts of such State, for the purpose of winding up the affairs of such corporation or company and dividing its assets ratably among its creditors and lawfully among those entitled thereto, prior to proceedings having been commenced against such corporation or company under the bankrupt laws of the United States, any order made or that shall be made by such court agreeably to the State law for the ratable distribution or payment of any dividend of assets to the creditors of such corporation or company while such State court shall remain actually or constructively in possession or control of the assets of such corporation or company, shall be deemed valid notwithstanding proceedings in bankruptcy may have been commenced and be pending against such corporation or company.<sup>276</sup>

Mining Co., 4-144; S. C., 4-394; Adams v. R. R. Co., 4-314; Allen v. Soldiers' Business Messenger and Dispatch Co., 4-537; Ala. and Chat. R. R. Co. v. Jones, 5-97; Sweat v. R. R. Co., 5-234; J. & S. Warshing, 5-350; Merchants' Ins. Co., 6-43; B., Hart. and E. R. R. Co., 6-209; Independent Ins. Co., 6-260; Hercules Mutual L. Ass. Society, 6-338; Platt v. Archer, 6-465; Winter v. R. R. Co., 7-289; Upton v. Burnham, 8-221; Smith v. Manuf. Nat. Bank, 9-122; Sawyer v. Hoag, 9-145; Leiter v. Payson, 9-205; Watson v. Citizens' Sav. Bank, 9-458; Mendenhall, 9-497; Meyers v. Seetey et al., 10-411;

Southern Minnesota R. R. Co., 10-86; Union Pacific R. R. Co., 10-178; Geo. Chandler, receiver, et al. v. A. Sidle, a stockholder, 10-236; Sarah O. Allen v. Wm. Ward, a stockholder, 10-285; Ansonia Brass and Copper Co., respondent, v. The New Lamp Chimney Co., appellant, 10-355; Upton, assig. of the Great Western Ins. Co. of Chicago, v. Hansbrough, 10-368; The St. Helen's Mill Co., 10-414.

#### 276. PROCEEDINGS IN STATE COURT.

Adams v. R. R. Co., 4-314; Watson v. Citizens' Bank, 9-458.

## CHAPTER VII.

### FEEs AND COSTS.

**SEC. 5124.**—FEES.

**SEC. 5125.**—TRAVELING AND INCIDENTAL EXPENSES.

**SEC. 5126.**—MARSHAL'S FEES.

**SEC. 5127.**—JUSTICES OF THE SUPREME COURT MAY CHANGE TARIFF OF FEES.

**SEC. 5124.**—In each case there shall be allowed and paid, in addition to the fees of the clerk of the court as now established by law, or as may be established by general order for fees in bankruptcy, the following fees,

which shall be applied to paying for the services of the Registers:

*First.* For issuing every warrant, two dollars.

*Second.* For each day in which a meeting is held, three dollars.

*Third.* For each order for a dividend, three dollars.

*Fourth.* For every order substituting an arrangement by trust deed for bankruptcy, two dollars.

*Fifth.* For every bond with sureties, two dollars.

*Sixth.* For every application for any meeting in any matter under this act, one dollar.

*Seventh.* For every day's service while actually employed under a special order of the court, a sum not exceeding five dollars, to be allowed by the court.

*Eighth.* For taking depositions, the fees now allowed by law.

*Ninth.* For every discharge when there is no opposition, two dollars.

Such fees shall have priority of payment over all other claims out of the estate, and, before a warrant issues, the petitioner shall deposit with the clerk of the court fifty dollars as security for the payment thereof; and if there are not sufficient assets for the payment of the fees, the person upon whose petition the warrant is issued shall pay the same, and the court may issue an execution against him to compel payment to the Register.<sup>277</sup>

SEC. 5125.—The traveling and incidental expenses of the Register, and of any clerk or other officer attending him, shall be settled by the court in accordance with the rules prescribed by the justices of the Supreme Court, and paid out of the assets of the estate in respect of which such Register has acted; or, if there are no such assets, or if the assets are insufficient, such expenses shall form a part of the costs in the case in which the Register acts, to be apportioned by the judge.<sup>278</sup>

SEC. 5126.—Before any dividend is ordered, the assignee shall pay out of the estate to the messenger the following fees, and no more:

*First.* For service of warrant, two dollars.

*Second.* For all necessary travel, at the rate of five cents a mile each way.

*Third.* For each written note to creditor named in the schedule, ten cents.

*Fourth.* For custody of property, publication of notices, and other services, his actual and necessary expenses, upon returning the same in specific items, and making oath that they have been actually incurred and paid by him, and are just and reasonable, the same to be taxed or adjusted by the court, and the oath of the messenger shall not be conclusive as to the necessity of such expenses.

For cause shown, and upon hearing thereon, such further allowance

## 277. FEES OF REGISTER.

Macintire, 1-11; Costs and Fees, 1-24; J. Clark, 1-188; Dean, 1-249; J. H. Robinson, 1-285; Scofield v. Moorhead, 2-1; Mealy, 2-128; Loder Bros., 2-517; Eidom,

3-160; Alfred Jackson, 8-424; Fees for Register, 10-141.

## 278. EXPENSES OF REGISTERS.

Dean, 1-249; Sherwood, 1-344.

may be made as the court, in its discretion, may determine.<sup>279</sup>

SEC. 5127.—The enumeration of the foregoing fees shall not prevent the justices of the Supreme Court from prescribing a tariff of fees for all other services of the officers of courts of bankruptcy, or from reducing the fees prescribed in the three preceding sections, in classes of cases to be named in their general orders.<sup>280</sup>

SEC. 5127 (A).—That from and after the passage of this act the fees, commissions, charges, and allowances, excepting actual and necessary disbursements, of, and to be made by the officers, agents, marshals, messengers, assignees, and Registers in cases of bankruptcy, shall be reduced to one-half of the fees, commissions, charges, and allowances heretofore provided for or made in like cases:

*Provided*, That the preceding provision shall be and remain in force until the justices of the Supreme Court of the United States shall make and promulgate new rules and regulations in respect to the matters

aforesaid, under the powers conferred upon them by sections 4990 and 5127 of said act, and no longer, which duties they shall perform as soon as may be.<sup>281 282 283</sup>

SEC. 5127 (B).—That it shall be the duty of the marshal of each district, in the month of July of each year, to report to the clerk of the District Court of such district, in a tabular form, to be prescribed by the justices of the Supreme Court of the United States, as well as such other or further information as may be required by said justices:

*First.* The number of cases in bankruptcy in which the warrant prescribed in section 5019 of said act has come to his hands during the year ending June 30th, preceding;

*Secondly.* How many such warrants were returned, with the fees, costs, expenses, and emoluments thereof, respectively and separately;

*Thirdly.* The total amount of all other fees, costs, expenses, and emoluments, respectively and separately, earned or received by him during such year, from or in respect of any matter in bankruptcy;

#### 279. MESSENGER AND MARSHAL'S FEES.

Dean, 1-249; Talbot, 2-280; Fortune, 2-662; Alexander, 3-20; Lowenstein, 8-268; Zeiber v. Hill, 8-239; Donohue & Page, 8-453; Comstock, 9-88.

#### 280. WHERE TWO OR MORE ORDERS SERVED AT ONE TIME.

Donahue & Page, 8-453.

#### 281. FEES OF ASSIGNEES.

N. Y. Mail S. S. Co., 2-423; Davenport, 8-77; Pegues, 3-80; Reilly v. Tully, 8-82; Downing, 3-741; Dibblee et al., 3-754;

Gardner v. Cook, assignee, 7-346; Troy Woolen Co., 8-412; Sweat, 9-48; Freelander & Gerson v. Holleman, 9-831; Jones, 9-491; Morse v. Grittmann, 10-132; Reed v. Alerhouse et al., 10-277.

#### 282. BANKRUPT'S ALLOWANCES.

McNair, 2-219; David Anderson, 2-537; M. Old et al., 4-146; Keefer, 4-389.

#### 283. PETITIONING CREDITOR—COST.

Daniel Williams, 2-83; Waite & Croker, 2-452; Schwab, 2-488; N. Y. Mail S. S. Co., 8-627; Daniel Sheehan, 8-353; Ward, 9-349.

*Fourthly.* A summarized statement of such fees, costs, and emoluments, exclusive of actual disbursement in bankruptcy, received or earned for such year; and liabilities therein, respectively and separately;

*Fifthly.* A summarized statement of all actual disbursements in such cases for such year.

And in like manner, every Register shall, in the same month and for the same year, make a report to such clerk, of—

*First.* The number of voluntary cases in bankruptcy coming before him during said year;

*Secondly.* The amount of assets and liabilities, as nearly as may be, of the bankrupts;

*Thirdly.* The amount and rate per centum of all dividends declared;

*Fourthly.* The disposition of all such cases;

*Fifthly.* The number of compulsory cases in bankruptcy coming before him, in the same way;

*Sixthly.* The amount of assets and liabilities, as nearly as may be, of such bankrupts;

*Seventhly.* The disposition of all such cases;

*Eighthly.* The amounts and rate per centum of all dividends declared in such cases;

*Ninthly.* The total amount of fees, charges, costs, and emoluments of every sort, received or earned by such Register during said year in each class of cases above stated.

And in like manner, every assignee shall, during said month, make like return to such clerk, of—

*First.* The number of voluntary and compulsory cases, respectively and separately, in his charge during said year;

*Secondly.* The amount of assets

*Thirdly.* The total receipts and disbursements therein, respectively and separately;

*Fourthly.* The amount of dividends paid or declared, and the rate per centum thereof, in each class, respectively and separately;

*Fifthly.* The total amount of all his fees, charges, and emoluments, of every kind therein, earned or received;

*Sixthly.* The total amount of expenses incurred by him for legal proceedings and counsel fees;

*Seventhly.* The disposition of the cases respectively;

*Eighthly.* A summarized statement of both classes as aforesaid.

And in like manner, the clerk of said court, in the month of August in each year, shall make up a statement for such year, ending June 30th, of—

*First.* All cases in bankruptcy pending at the beginning of the said year;

*Secondly.* All of such cases disposed of;

*Thirdly.* All dividends declared therein;

*Fourthly.* The number of reports made from each assignee therein;

*Fifthly.* The disposition of all such cases;

*Sixthly.* The number of assignees' accounts filed and settled;

*Seventhly.* Whether any marshal, Register, or assignee has failed to make and file with such clerk the reports by this act required, and, if any have failed to make such reports, their respective names and residences.

And such clerk shall report in re-

spect of all cases begun during said year.

And he shall make a classified statement, in tabular form, of all his fees, charges, costs, and emoluments, respectively, earned or accrued during said year, giving each head under which the same accrued, and also the sum of all moneys paid into and disbursed out of court in bankruptcy, and the balance in hand or on deposit.

And all the statements and reports herein required shall be under oath, and signed by the persons respectively making the same.

And said clerk shall, in said month of August, transmit every such statement and report so filed with him, together with his own statement and report aforesaid, to the Attorney-General of the United States.

Any person who shall violate the provisions of this section shall, on motion made, under the direction of the Attorney-General, be by the District Court dismissed from his office, and shall be deemed guilty of a misdemeanor, and, on conviction thereof, be punished by a fine of not more than five hundred dollars, or by imprisonment not exceeding one year.

---

## CHAPTER VIII.

### PROHIBITED AND FRAUDULENT TRANSFERS.

SEC. 5128.—PREFERNCES BY INSOLVENT.

SEC. 5129.—FRAUDULENT TRANSFERS.

SEC. 5130.—PRESUMPTIVE EVIDENCE OF FRAUD.

SEC. 5131.—FRAUDULENT AGREEMENTS.

SEC. 5132.—PENALTIES AGAINST FRAUDULENT BANKRUPT.

---

SEC. 5128.—<sup>284</sup> If any person, being insolvent,<sup>285</sup> or in contemplation of

insolvency, within four months<sup>286</sup> before the filing of the petition by

---

#### 284. CONSTRUCTION.

Black & Secor, 1-353; Arnold, 2-160; Wadsworth v. Tyler, 2-316; Haughey v. Albin, 2-399; Foster v. Hackley & Sons, 2-406; Kingsbury, 3-318; Wynne, 4-23; Tonkin & Trewartha, 4-52; Potter v. Coggeshall, 4-73; Richter's Estate, 4-221.

#### 285. INSOLVENCY.

Merchants' Nat. Bank of Hastings v. Truax, 1-545; Wadsworth v. Tyler, 2-316; Gay, 2-358; Haughley v. Albin, 2-399; J. B. Wright, 2-490; Graham v. Stark,

3-357; Scammon v. Cole, 3-393; Driggs v. Moore, Foote & Co., 3-602; Potter v. Coggeshall, 4-73; Rison v. Knapp, 4-349; Hall v. Wager & Fales, 5-181; Wilson v. City Bank, 5-270; Sawyer v. Turpin, 5-339; Darby's trustees v. Lucas, 5-437; Toof v. Martin, 6-49; Forsyth & Murtha, 7-174; Warren v. Tenth Nat. Bank, 7-481; Burfee v. Nat. Bank, 9-314; Clark & Daughtry, 10-21.

#### 286. LIMITATION AS TO TIME.

Forsaith v. Merritt, 3-48; T. S. Shepard, 3-172; Wynne, 4-23; Potter v. Cog-



or against him, with a view to give a preference<sup>287</sup> to any creditor or person having a claim against him, or who is under any liability for him, procures or suffers any part of his property to be attached, sequestered, or seized on execution, or makes any payment, pledge, assignment, trans-

fer,<sup>288</sup> or conveyance of any part of his property, either directly or indirectly, absolutely or conditionally, the person receiving such payment, pledge, assignment, transfer, or conveyance, or to be benefited thereby, or by such attachment, having reasonable cause<sup>289</sup> to believe such

geshall, 4-73; Fuller, 4-115; Bean v. Brookmire & Rankin, 4-196; Butler, 4-303; Maurer v. Frantz, 4-431; Hubbard v. Allaire Works, 4-623; Collins v. Gray, 4-631; Dow, 6-10; Withrow v. Fowler, 7-339; Seaver v. Spink, 8-218; Kansas Manuf. Co., 9-76; Cook v. Tullis, 9-433; Geo. H. Lane & Co., 10-135.

#### 287. INTENT TO PREFER.

Beck, 1-586; Haughey v. Albin, 2-399; Foster v. Hackley & Sons, 2-406; Wilson v. Brinkman, 2-468; Brock v. Terrell, 2-643; Ahl v. Thorner, 3-118; Batchelder, 3-150; Kingsbury, 3-318; Graham v. Stark, 3-357; Scammon v. Cole, 3-393; Campbell v. Traders' Nat. Bank, 3-498; Driggs v. Moore, Foote & Co., 3-602; Samson v. Burton, 4-1; Terry v. Cleaver, 4-126; Beattie v. Gardner, 4-323; Rison v. Knapp, 4-349; Greggs, 4-456; Martin v. Toof, 4-488; Eldridge, 4-498; Darby's trustees v. Boatman's S. I., 4-601; Second Nat. Bank v. Hunt, 4-616; Giddings v. Dodd, 4-657; Hall v. Wager & Fales, 5-181; Harvey v. Crane, 5-218; Wilson v. City Bank, 5-270; Sawyer v. Turpin, 5-339; Warner, 5-414; Wood, 5-421; Toof v. Martin, 6-49; Forsyth v. Murtha, 7-174; McKay & Aldus, 7-230; Perrin & Hance, 7-283; Warren v. Tenth Nat. Bank, 7-481; Cox v. Hale, 8-562; Smith v. Little, 9-111; Clark v. Iselin, 9-19; Catlin & Hoffman, 9-342; Cook v. Tullis, 9-433; Britton v. Payen, 9-445; Hyde v. Corrigan, 9-466.

#### 288. FRAUDULENT PREFERENCES.

Schick, 1-177; Drummond, 1-231; Beck, 1-588; Haughey v. Albin, 2-399; Foster v. Hackley & Sons, 2-406; Hunt, 2-539; Diblee, 2-617; Ahl et al. v. Thorner, 3-118; Batchelder, 3-150; Miller v. Keys,

3-225; Hammond v. Coolidge, 3-273; Palmer, 3-283; Williams & Co., 3-286; Scammon v. Cole, 3-393; Chamberlain, 3-710; G. Phelps v. S. P. Sterns, 4-34; Babbitt v. Walbrun & Co., 4-121; Terry & Cleaver, 4-126; Bean v. Brookmire & Rankin, 4-196; Street v. Dawson, 4-207; Darby, 4-211; Gregg, 4-456; Scammon & Cole, 5-257; Lord, 5-318; Hunt & Hornell, 5-433; Toof v. Martin, 6-49; Traders' Nat. Bank of Chicago v. Campbell, assig., 6-353; Nounnan & Co., 7-15; Dunkle & Dreisbach, 7-72; Forsyth & Murtha, 7-174; Warren, assig., v. Tenth National Bank & Brennan, Sheriff, &c., 7-481.

#### 289. REASONABLE CAUSE.

Schnepf, 1-190; Merchants' Nat. Bank of Hastings v. Truax, 1-545; Beck, 1-586; Tuttle v. Truax, 1-601; Deane v. Garrett, 2-89; Arnold, 2-160; Grow v. Ballard, 2-254; Wadsworth v. Tyler, 2-316; Kerr, 2-388; Foster v. Hackley & Sons, 2-406; E. Meyer, 2-422; J. B. Wright, 2-490; McGie, 2-531; Hunt, 2-539; Colman, 2-563; Brock v. Terrell, 2-643; Davis & Green v. Armstrong, 3-34; Batchelder, 3-150; White v. Rafferty, 3-221; Palmer, 3-283; Kingsbury, 3-318; Graham v. Stark, 3-357; Campbell v. Traders' Nat. Bank, 3-498; Ouimette, 3-566; Collins v. Bell, 3-587; Driggs v. Moore, Foote & Co., 3-602; Ungewitter v. Von Sachs, 3-723; Jenkins v. Mayer, 3-776; Wilson v. Stoddard, 4-254; Rison v. Knapp, 4-349; Smith v. Buchanan, 4-397; Stranahan v. Gregory & Co., 4-427; Vogle v. Lathrop, 4-439; Gregg, 4-456; Shaffer v. Fritchery, 4-548; Post v. Corbin, 5-11; Cookingham & Morgan, 5-16; Golson v. Neihoff, 5-56; Hall v. Wager & Fales, 5-181; Haskell v. Ingalls, 5-205; Scammon v. Cole, 5-257;

person is insolvent, and knowing that such attachment, sequestration, seizure, payment, pledge, assignment, or conveyance is made in fraud of the provisions of this title,<sup>290</sup> the same shall be void, and the assignee may recover the property,<sup>291</sup> or the value of it, from the person so receiving it, or so to be benefited.<sup>292</sup> And nothing in said section 5128 shall be construed to invalidate any loan of actual value, or the security therefor,

made in good faith, upon a security taken in good faith on the occasion of the making of such loan.<sup>293</sup>

SEC. 5129.—If any person, being insolvent, or in contemplation of insolvency or bankruptcy, within six months before the filing of the petition by or against him, makes any payment, sale, assignment, transfer, conveyance, or other disposition of any part of his property to any person

Wilson v. City Bank, 5-270; Hood v. Karper, 5-358; Toof v. Martin, 6-49; Bingham v. Richmond, 6-127; Babbitt v. Walbrun, 6-359; North v. House, 6-365; Forsyth v. Murtha, 7-174; Warren v. Del., L. & W. R. R. Co., 7-451; Warren v. Tenth Nat. Bank, 7-481; Cole v. Hale, 8-562; Burfee v. Nat'l Bank, 9-314; Hyde v. Corrigan, 9-466; Zahn v. Fry, 9-546; Clark v. Daughtrey, 10-21; Hamlin v. Pettibone, 10-172; Bartholew v. Bean, 10-241; Harrison v. McLaren, 10-244; Smith v. McLeon, 10-260.

v. Hoguet, 5-159; Haskell v. Ingalls, 5-205; Wilson v. City Bank, 5-270; F. O. Lord, 5-318; Sedgwick v. Millwood, 5-347; Hood v. Karper, 5-358; Wood, 5-421; Bingham v. Frost, 6-130; Dunkle & Driesbach, 7-72; Clark v. Iselin, 9-19; Kansas City Manf. Co., 9-76; Cook v. Waters, 9-155; Burfee v. Nat. Bank, 9-314; Catlin v. Hoffman, 9-342; Britton v. Payen, 9-445; Partridge v. Dearborn, 9-474; Zahn & Fry, 9-546; Sedgwick v. Place, 10-29; Lane & Co., 10-135; Brooke v. McCracken, 10-461; Allen & Co. v. Montgomery, 10-503.

#### 290. FRAUD UPON THE ACT.

Black & Secor, 1-353; Haughey v. Albin, 2-399; Foster v. Hackley & Sons, 2-406; Kingsbury, 3-318; Beattie v. Gardiner, 4-323; Smith v. Buchanan, 4-397; Gregg, 4-456; Hall v. Wager & Fales, 5-181; Toof v. Martin, 6-49.

#### 292. IN CASES WHERE THERE IS A SURETY.

Ahl v. Thorner, 3-118; Graham v. Stark, 3-357; Scammon v. Cole, 3-393; Cookingham v. Morgan, 5-16; Bean v. Laffin, 5-333; Bartholow v. Bean, 10-241.

#### 291. VOIDABLE TRANSFERS.

Black & Secor, 1-353; Bradshaw, assig., v. H. Klein et al., 1-542; Kerr, 2-388; Haughey v. Albin, 2-399; Wilson v. Brinkman, 2-468; Armstrong v. Rickey Bros., 2-473; J. B. Wright, 2-490; McGie, 2-531; White, assig., v. Rafferty, 3-221; C. A. Davidson, 3-418; Campbell v. Traders' Nat. Bank, 3-498; Samson v. Burton, 4-1; Terry v. Cleaver, 4-126; Beattie v. Gardiner, 4-323; Rison v. Knapp, 4-349; Smith v. Buchanan, 4-397; Maurer v. Frantz, 4-431; Vogle v. Lathrop, 4-439; Schaffer v. Fritchery, 4-548; Post v. Corbin, 5-11; Golson v. Neihoff, 5-56; Krogman, 5-116; Kohlsaat

#### 293. WHAT MAY BE RECOVERED.

Tuttle v. Truax, 1-601; Grow v. Ballard, 2-194; Bill v. Beckwith, 2-241; Wilson v. Brinkman, 2-468; Brock v. Terrell, 2-643; White v. Rafferty, 3-221; Campbell v. Traders' Nat. Bank, 3-498; Catlin v. Foster, 3-540; Street v. Dawson, 4-207; Kahley, 4-378; Schaffer v. Fritchery & Thomas, 4-548; Tiffany & Boatman's S. I., 4-601; Collins v. Gray, 4-631; Cookingham & Morgan, 5-16; Sedgwick v. Millward, 5-347; North v. House, 6-365; Stowe, 6-429; Christman & Haynes, 8-528; Harrison v. McLaren, 10-244.

who then has reasonable cause to believe him to be insolvent, or to be acting in contemplation of insolvency, and knowing that such payment, sale, assignment, transfer, or other conveyance, is made with a view to prevent his property from coming to his assignee in bankruptcy, or to prevent the same from being distributed under this act, or to defeat the object of or in any way impair, hinder, impede or delay the operation and effect of, or to evade any of the provisions of this title, the sale, assignment, transfer or conveyance shall be void, and the assignee may recover the property, or the value thereof, as assets of the bankrupt.<sup>294</sup>

SEC. 5130.—The fact that such a payment, pledge, sale, assignment, transfer, conveyance, or other disposition of a debtor's property as is described in the two preceding sections is not made in the usual and ordinary course of business of the debtor, shall be *prima facie* evidence of fraud.<sup>295</sup>

SEC. 5130 (A).—That in cases of involuntary or compulsory bankruptcy,

the period of four months mentioned in Sec. 5128 of the act to which this is an amendment, is hereby changed to two months, but this provision shall not take effect until two months after the passage of this act, and in the cases aforesaid, the period of six months mentioned in said Section 5129 is hereby changed to three months, but this provision shall not take effect until three months after the passage of this act.

SEC. 5131.—Any contract, covenant or security made or given by a bankrupt or other person with or in trust for any creditor for securing the payment of any money as a consideration for or with intent to induce the creditor to forbear opposing the application for discharge of the bankrupt shall be void; and any creditor who obtains any sum of money or other goods, chattels, or security from any person as an inducement for forbearing to oppose or consenting to such application for discharge, shall forfeit all right to any share or dividend in the estate of the bankrupt and shall also forfeit double the value or amount of such money,

#### 294. TRANSFERS TO STRANGERS.

Arledge, 1-644; Sedgwick v. Place, 1-673; Rosenfield, 2-117; Sidle, 2-220; Wadsworth v. Tyler, 2-316; Hawkins, 2-378; Buse, 3-215; Peirce & Holbrook, 3-258; Evans, 3-261; Broome, 3-343; Askew, 3-575; Potter v. Coggeshall, 4-73; Babbitt v. Walbrun & Co., 4-121; Mallory, 4-153; Bean v. Brookmire, 4-196; Butler, 4-303; Stubbs, 4-376; Burkholder v. Stamp, 4-597; Tiffany v. Boatman's S.I., 4-601; Hubbard v. Allaire Works, 4-623; Jones v. Kinney, 4-649; Reed v. Taylor, 4-710; Cookingham v. Morgan, 5-16; Lawrence v. Graves, 5-279; Darby's trustees v. Lucas, 5-437; Maltby v. Hotchkiss, 5-485;

Judson v. Kelty, 6-165; Babbitt v. Walbrun & Co., 6-359; Walbrun v. Babbitt, 6-359; Cohn, 6-379; A. Pusey, 7-45; Sedgwick v. Wormser, 7-186; McKay & Aldus, 7-230; Babbitt v. Burgess, 7-561; Sedgwick v. Lynch, 8-289; Stobaugh v. Mills, 8-361; Cook v. Tullis, 9-433.

#### 295. ORDINARY COURSE OF BUSINESS.

Hunt, 2-539; Scammon v. Cole, 3-393; Driggs v. Moore, Foote & Co., 3-602; Babbitt v. Walbrun & Co., 4-121; Rison v. Knapp, 4-349; Darby's trustees v. Lucas, 5-427; Judson v. Kelty, 6-165; Sedgwick v. Wormser, 7-186.

goods, chattels, or security so obtained, to be recovered by the assignee for the benefit of the estate.<sup>296</sup>

SEC. 5132.—Every person respecting whom proceedings in bankruptcy are commenced, either upon his own petition or upon that of a creditor:

*First.* Who secretes or conceals any property belonging to his estate; or,

*Second.* Who parts with, conceals, destroys, alters, mutilates or falsifies, or causes to be concealed, destroyed, altered, mutilated or falsified, any book, deed, document or writing, relating thereto; or,

*Third.* Who removes or causes to be removed any such property or book, deed, document or writing out of the district, or otherwise disposes of any part thereof, with intent to prevent it from coming into the possession of the assignee in bankruptcy, or to hinder, impede, or delay him in recovering or receiving the same; or,

*Fourth.* Who makes any payment, gift, sale, assignment, transfer or conveyance of any property belonging to his estate with the like intent; or,

*Fifth.* Who spends any property belonging to his estate in gaming; or,

*Sixth.* Who, with intent to de-

fraud, willfully and fraudulently conceals from his assignee or omits from his inventory any property or effects required by this title to be described therein; or,

*Seventh.* Who, having reason to suspect that any other person has proved a false or fictitious debt against his estate, fails to disclose the same to his assignee within one month after coming to the knowledge or belief thereof; or,

*Eighth.* Who attempts to account for any of his property by fictitious losses or expenses; or,

*Ninth.* Who, within three months before the commencement of proceedings in bankruptcy, under the false color and pretense of carrying on business and dealing in the ordinary course of trade, obtains on credit from any person any goods or chattels with intent to defraud; or,

*Tenth.* Who, within three months next before the commencement of proceedings in bankruptcy, with intent to defraud creditors, pawns, pledges, or disposes of, otherwise than by transactions made in good faith in the ordinary way of his trade, any of his goods or chattels which have been obtained on credit and remain unpaid for,

Shall be punishable by imprisonment, with or without hard labor, for not more than three years.<sup>297</sup>

#### 296. VOID AGREEMENTS.

Second Nat. Bank v. Hunt, 4-616; O'Connor v. Parker, 4-713; Austin v. Markham, 10-548.

#### 297. MISDEMEANORS.

U. S. v. Clark, 4-59; U. S. v. Prescott, 4-112; U. S. v. Geary, 4-534; Commonwealth v. Walker, 4-672; U. S. v. Pusey, 6-284; U. S. v. Thomas, 7-188.

## ADDITIONAL TABLE OF CASES.

### ALPHABETICALLY ARRANGED ACCORDING TO SUBJECTS.

- Accommodation Endorser, 9-57.
- Accounting. Burkholder et al. v. Stump, 4-597; Clark & Bininger, 6-194; Noyes, 6-277.
- Acknowledgment. In re Powell, 2-45.
- Action. Masterson, 4-553.
- Act of Bankruptcy. In re Alfred J. Wells, 1-171; Julius Schick, 1-177; John T. Drummond, 1-231; Walter C. Cowles, 1-280; Jersey City Window Glass Company, 1-426; Wm. Leeds, 1-521; Wm. H. Langley, 1-559; Rankin & Pullam et al. v. Florida R. R. Co., 1-647; Dunham & Orr, 2-17; Lowenstein, 2-306; Fitch v. McGie, 2-531; Morgan, Root & Co. v. Mastick, 2-521; Farrin v. Crawford et al., 2-602; Doan v. Compton & Doan, 2-608; Thompson v. McClallen, 3-185; Smith, 3-378; Woolford, 3-444; Hardy, Blake & Co. v. Bininger & Co., 4-262; Keefer, 4-389; McLean et al. v. Brown, Weber & Co., 4-585; Wright v. Filley, 4-611; Stevens, 5-112; Warner et al., 5-414; Curran v. Munger et al., 6-33; Merchants' Ins. Co., 6-43; Pratt, 6-276; Cohn, 7-31; Woods, 7-126; Mannheim, 7-342; Sandford, 7-352; Munn, 7-468; McNaughton, 8-44; Tiffany v. Lucas, 8-49; Clemens, 8-279; Wilson, 8-396; Pratt, 9-47; Weaver, 9-132; Scull, 10-166; Union Pacific R. R. Co., 10-178.
- Adjournment. George S. Mawson, 1-271; John Thompson, 1-323; Wm. Griffin, 1-371; Charles G. Patterson, 1-125; Wm. H. Hughes, 1-226; Isaac Seckendorf, 1-626; Hyman, 2-333.
- Adjudication. John Bellamy, 1-96; Mary A. O'Brien, 1-176; Benj. H. Hatcher, 1-390; Pettis, 2-44; Fallon, 2-277; Goodfellow, 3-452; Mellick, 4-97; Fox v. Eckstein, 4-373; Fogarty & Gerrity, 4-451; Williams v. Merritt, 4-706; Hunt, Tillinghast & Co. v. Pooke & Steere, 5-161; Bush, 6-179; Boston, Hartford & Erie R. R. Co., 6-222; Cornwall, 6-305; Duncan & Driesbach, 7-72; Ess v. Clarendon, 7-133; Westcott et al., 7-285; DeForest, 9-278; Raffauf, 10-69; Hill, 10-133; Scull, 10-166; Pickering, 10-208; Noonan, 10-330; Comstock & Co., 10-451.
- Advances. Bailey v. Nichols et al., 2-478; Gregg, 3-529; Brown, 3-720; Haake, 7-61; Amos McKay v. Aldus, 7-280; McGready v. Harris, 9-135; Lane & Co. & Boynton, 10-135.
- Advertisement. Geo. E. White v. John E. May, 1-218.
- Advice of Counsel. Isaac Rosenfield, Jr., 1-319; Curtis Judson, 1-364.
- After-acquired Property. Charles G. Patterson, 1-125; Hugh Campbell, 1-166.
- Agent. Wm. Knoepfel, 1-23; Knoepfel, 1-70; James J. Purvis, 1-162; Graham, assignee, v. Stark et al., 3-357; Munger & Champlin, 4-295; Vogel v. Lathrop, 4-439; Curran v. Munger et al., 6-33; Troy Woolen Co., 8-412; Whyte, 9-267.
- Agreed Cases. John Pulver, 1-47.

Agreement. Phelps v. Clasen, 8-87; The Second National Bank of Leavenworth v. Hunt, assignee, 4-616.

Alias Executions. Hazelton, 2-31.

Aliens. Goodfellow, 8-452.

Allegation. Leonard, 4-568.

Amendment. Wm. D. Hill, 1-16; Jas. M. Lowery, 1-70; James T. Ray, 1-204; Wm. H. Little, 1-341; Asa W. Craft, 1-378; Robert Radcliffe, 1-400; John Morgenthal, 1-402; Jersey City Window Glass Co., 1-426; Charles H. McIntire, 1-436; Frederick C. Crowley v. Wm. L. Hobletzell, 1-516; Craft, 2-111; Watts, 2-447; Preston, 8-103; Kingon, 8-446; May v. Harper & Atherton, 4-478; Loonard, 4-568; Heller, 5-46; Carson, 5-290; Baldwin v. Wilder et al., 6-85; Sampson v. Blake, 6-410; Alabama & Chattanooga R. R. Co. v. Jones, 7-145; Herschman, 7-604; Jordan, 8-180; Smith, 8-401; Kean et al., 8-367; Dillard, 9-8; Everett, 9-90; McConnell, 9-387; Daniel Deckert, 10-1; Joliet Iron and Steel Co., 10-60; Scammon, 10-67; Raffauf, 10-69; Angel, 10-73; J. F. & C. R. Parks, 10-82; Burch, 10-150; O'Bear v. Thomas, 10-151; Barnett et al. v. Hightower & Butler, 10-157; Hamlin v. Pettibone, 10-173; Pierson, 10-193; Sherman, 10-214; Simmons, 10-254; Cogdell v. Exum, 10-327; Jordan, 10-427; C. J. & C. F. Francke, Jr., 10-438; Comstock & Co., 10-451; Brook v. McCracken, 10-461.

Appeal. P. & M. Burns, 1-175; Alexander, 3-29; Kyler, 3-46; Dibble et al., 3-72; Benjamin v. Hart, 4-408; York & Hoover, 4-479; Place v. Sparkman, 4-541; Morgan et al. v. Thornhill et al., 5-1; Baldwin v. Rappellee, 5-10; Scammon v. Cole, 5-257; Rainsford, 5-381; Troy Woolen Co., 6-16; Sampson v. Blake, 6-401; Same, 6-410; Casey, 8-72; Mead v. Thompson, 8-529; O'Neale v. Daughtrey, 10-294.

Appearance. Freeman Orne, 1-80; Palmer, 3-301; Alabama and Chattanooga R. R. Co. v. Jones, 5-98; Anderson, 9-360; Wood Mowing and Reaping Machine Co. v. Brooks, 9-395; Seabury, 10-90; Morse v. Grittman, 10-132.

Application for Discharge. Canaday, 3-11.

Apportionment. Rosenfield, 2-117.

Appropriation of Payment. Cook v. Waters et al., 9-155.

Arrangement. Wm. H. Little, 1-341; Muller & Brentano, 8-329; Goodwin v. Sharkey, 8-558.

Arrest. Whitehouse, 4-63.

Assets. Charles G. Patterson, 1-125; Wm. H. Hughes, 1-226; Frederick Jewett, 1-491; Hummitch, 2-12; Pomeroy, 2-14; Crockett et al., 2-208; Myrick, 3-154; Montgomery, 8-429; Frederick, 3-465; Clark & Bininger, 3-491; MacKay, 4-64; Marshal, 4-106; Snedaker, 4-166; Bank of India, 4-185; Mays v. Manufacturers' National Bank of Philadelphia, 4-446; Wilson v. Capuro et al., 4-714; Boyd, 5-199; Independent Ins. Co., 6-260; Woods, 7-126; Harrell v. Beal, 9-49; J. F. & C. R. Parks, 9-270; Pollman, 9-376; Wood Machine Co., 9-395; Upton v. Hambrough, 10-368.

Assignee. Mortimer C. Cogswell, 1-62; John Bellamy, 1-64; Anonymous, 1-122; Samuel W. Levy & Mark Levy, 1-180; John S. Perry, 1-220; Jacob H. Mott v. Jordan Mott, 1-223; Wm. H. Hughes, 1-226; Jules Clarmont, 1-276; J. McClellan, 1-389; Edward T. Sturgeon, 1-498; Frederick B. Walton et al., 1-557; David Shields, 1-603; Thomas F. Bowie, 1-628; Geo. N. Holedge, 1-644; Powell, 2-45; Jones, 2-59; Anonymous, 2-68; Grant, 2-106; Lawson, 2-113; Rundle & Jones, 2-113; M. Breen, 2-197; Dow, 2-308; Wadsworth v. Tyler, 2-316; Fernberg et al., 2-353; Metzger, 2-355; New York Mail Steamship Co., 2-423; Pearson, 2-477; Loder Bros., 2-515; Barrett, 2-533; Scheiffer & Garrett, 2-591; Davenport, 3-77; Tully, 3-82; Mebane, 3-347; Laurie et al., 4-32; Zinn et al., 4-370; Eldridge, 4-498; Carson, 5-290; Rogers v. Winsor, 6-246; Stuyvesant Bank, 6-272; Stuart v. Hines et al., 6-416; Edmondson v. Hyde, 7-1; Ten Eyck v. Choate, 7-26; Morse, 7-56; Goodall v. Tuttle, 7-193; Longstreth v. Pennock et al., 7-449; Babbitt v. Burgess, 7-561; Perkins, 8-56; Marshal v. Knox et al., 8-97; Mosely, Wells & Co., 8-208; Adams v. Meyers, 8-214; Bean v. Amsink, 8-228; J. & M. Piromm, 8-357; Purviance v. Nat. Bank, 8-447; O'Dowd, 8-451; Mitchell v. McKibben, 8-548; Coxe v. Hale, 8-562; Lenihan v. Haman et al., 8-557; Clark, 9-67; Cook v. Waters et al., 9-155; Schapter, 9-324; Appleton v. Bowles, 9-354; Anderson, 9-360; Jones,



9-491; Pierson, 10-107; Read et al. v. Al-  
erhouse et al., 10-277; Cogdell v. Exum,  
10-327; Wheelock v. Lee, 10-363; Myers  
v. Seeley, 10-411; Brook v. McCracken,  
10-461; Allen & Co. v. Montgomery et al.,  
10-504; Foster v. Estate of Rhodes, 10-523;  
Smith v. Ely, 10-553.

Assignment. Martin, 2-549; Randall &  
Sunderland, 3-18; Neale, 3-177; Pearce &  
Holbrook, 3-258; Spicer & Peckham v.  
Ward & Trow, 3-513; Bowman v. Harding,  
4-20; Stubbs, 4-376; Cookingham et al. v.  
Morgan et al., 5-16; Dow, 6-10; Sands'  
Ale Brewing Co., 6-101; Bush, 6-179;  
North v. House et al., 6-365; Lenihan v.  
Haman et al., 8-557; Pierson, 10-107;  
Meeks v. Whately, 10-498.

Assumpsit. Stewart v. Emerson, 8-462.

Attachment. Wm. H. Langley, 1-559;  
Bridgman, 2-252; Stevens, 4-367; The  
Iron Mountain Co., 4-645; Stevens, 5-298;  
Miller v. O'Brien, 9-26.

Attorney and Counsel. William D. Hill,  
1-16; Wm. H. Knoepfel, 1-23; Knoepfel,  
1-70; Eliza Altenhain, 1-85; Edward P.  
Tanner, 1-316; Meyer, 2-422; Barrett,  
2-533; Butterfield, 6-257; Cristley, 10-276.

Bank Bill. Bank of N. C., 10-289.

Banker. Warner et al., 5-414; Hosie,  
7-601; Bank of Madison, 9-184; Tiffany  
v. Boatman's Saving Inst., 9-245.

Bankrupt. Charles G. Patterson, 1-125;  
Josiah Carpenter, 1-294; Thos. F. Bowie,  
1-628; McNair, 2-219; Adams, 2-278;  
Rison, assignee, v. Knapp, 4-349; Sedg-  
wick v. Wormser, 7-186; Lamb v. Dam-  
son, 7-509; Collins, 10-335; Woodail v.  
Austin & Holliday, 10-545.

Bankrupt Act. Billing, 2-512; Morgan,  
Root & Co. v. Mastick, 2-521; McLean,  
2-567; Carow, 4-544; Cretiew, 5-423;  
Goodall v. Tuttle, 7-193; Lewis, 8-546;  
King, 10-566.

Bankrupt Court. Strauss, 2-48.

Bankruptcy Proceedings. Pease et al.,  
6-173.

Bargain and Sale. Pusey, 6-40; Wood  
Mowing and Reaping Co., 9-395; Hall v.  
Scovel, 10-296; Kane v. Jenkinson,  
10-316.

Board of Trustees. Lady Bryan Mining  
Co., 4-394.

Bona Fide Purchaser. Rison v. Knapp,  
4-349.

Bond. Benjamin v. Hart, 4-408.

Bonus. Schaffer v. Fritchery & Thomas,  
4-548.

Books of Account. O'Bannon, 2-15; Sol-  
omon, 2-285; Newman, 2-302; Littlefield,  
3-57; Newman v. Connolly, 3-267; Rogers,  
v. Windsor, 6-246.

Burden of Proof. Wm. D. Hill, 1-275;  
Martin v. Toof, Phillips & Co., 4-488; Toof  
et al. v. Martin, 6-49.

Carrying on Business. Little, 2-294.

Cashier. Platt v. Archer, 6-165.

Certificate. Wm. D. Hill, 1-16; Jaycox  
& Green, 7-303.

Certifying Questions. John Pulver, 1-47;  
Samuel W. Levy & Mark Levy, 1-136;  
Charles G. Patterson, 1-161; Mawson, 1-265;  
Edward T. Sturgeon, 1-498; Bogart &  
Evans, 2-435; Clark v. Bininger, 6-202;  
Reakirt, 7-329.

Chattel Mortgage. Walter C. Cowles,  
1-280; Palmer, 3-283; Manley, 3-291;  
Griffith, 3-782; Butler, 4-303; Harvey v.  
Crane, 5-218; Bingham v. Richmond &  
Gibbs, 6-127; Kane v. Rice, 10-470; Smith  
v. Ely, 10-553.

Circuit Court. Alexander, 3-29; Rud-  
dick v. Billings, 3-61; Clark v. Bininger,  
3-487; Littlefield v. Delaware and Hudson  
Canal Co., 4-258; Alabama R. R. Co. v.  
Jones, 5-98; State of North Carolina v.  
Trustees of University et al., 5-466; Ala-  
bama and Chattanooga R. R. Co. v. Jones,  
7-145; Bachman v. Packard, 7-353;  
Woods et al. v. Buckwell et al., 7-405;  
Shearman v. Bingham, 7-490; Tiffany v.  
Boatman's Savings Inst., 9-245; Coit v.  
Robinson et al., 9-289; Brook v. McCrack-  
en, 10-461.

Claim and Delivery. Vogel, 2-428; Bol-  
ander v. Gentry, 2-656; Harthill, 4-392.

Commencement of Proceedings. Bow-  
man v. Harding, 4-20; Creditors v. Wil-  
liams, 4-580; Stevens, 5-298; Rogers,  
10-444.

Clerk. John Bellamy, 1-64; Same, 1-96;  
Wm. E. Townsend, 1-217.

Claim. Wynne et al. v. Smith, 4-47;  
City Bank of Savings, etc., 6-71; Pease et  
al., 6-173.

Commencing Suit. Firemen's Insurance Co., 8-123.

Commercial Paper. Hollis v. Kenny et al., 3-310.

Commissioner. Haley, 2-86.

Committee of Creditors. Stillwell 2-526; Stuyvesant Bank, 6-272.

Compensation. Jones, 9-491.

Composition. Elfeit v. Snow et al., 6-57.

Compromising. Dibblee et al., 8-72; Munger v. Champion, 4-295; Frank, 5-194; Warren & Rowe v. Tenth National Bank, 5-479; Eckford & Petry v. Greeley, 6-433.

Concealment. Lukens v. Aird, 2-81; Hussman, 2-438; Barnes v. Moore, 2-573; Fox v. Eckstein, 4-373; Rainsford, 5-381; Kempner, 6-521.

Confederate Currency. Mendenhall v. Carter, 7-320.

Confession of Judgment. Wright, 2-490; Fuller, 4-116; Lord, 5-318; Backman v. Packard, 7-353; Clark v. Iselin et al., 9-19.

Congress. Hunt, 2-540; Pickering, 10-208.

Consideration. Muler v. Keys, 3-225; Cornwall, 4-400; Cornwall, 6-305; Howard, Cole & Co., 6-372; Smith v. Kehr et al., 7-97; Dunkle & Driesbach, 7-107; Raymond S. Perrin & Hance, 7-283; Kehr et al. v. Smith, 10-49.

Consignment. Hammond v. Coolidge, 3-273.

Constitutionality. Sweet v. Boston Rl., 5-234; United States v. Pusey, 6-284; Ship Edith, 6-449; Safe Dep. & Sav. Inst., 7-398; Jordan, 8-180; Kean et al., 8-367; Everitt, 9-90; D. Deckert, 10-1; Russell v. Thomas, 10-14.

Construction and Interpretation. Foster v. Pratt, 3-236; Alabama and Chattanooga R. R. Co. v. Jones, 5-98; Skelly, 5-214; Sweet v. Railroad Co., 5-234; Cretlew, 5-423; Second National Bank of Leavenworth v. Hunt et al., 4-616; Collins v. Gray et al., 4-631; Andrews v. Graves, 4-652; Croman v. Cotting, 4-667; Noonan & Co., 7-15; Goodall v. Tuttle, 7-193; Massey et. al. v. Allen, 7-401; Swift, 7-591; Republic Insurance Company, 8-197; United States v. Throckmorton, 8-309; Hawkeye Smelting Co., 8-385; Walbrun v. Babbitt, 9-1; Smith et al. v.

Manufacturers' National Bank, 9-122; Cook v. Waters et al., 9-155; Rogers, 10-444.

Contemplation of Bankruptcy or Insolvency. Locke, 2-382; Johann 4-434; Martin v. Toof et al., 4-488; Gregg, 4-456; Hall v. Wager & Fales, 5-182.

Contempt. Hirsch, 2-3; Creditors v. Cozzens & Hall, 3-281; Dresser, 3-557; Moses, 6-181; Kempner, 6-521; Ulrich et al., 8-15; Watson v. Citizens' Savings Bank, 9-458.

Contesting Claim. Overton, 5-366.

Contingent Liability. Loder, 4-190; United States v. Throckmorton, 8-309; Riggin v. Maguire, 8-484.

Contract. Jones, 4-347; Sawyer et al. v. Turpin et al., 5-339; Lyon, 7-182; Pittock, 8-78; Morrell, 8-117; Jordan, 8-180; Goodman, 8-380; Smith, 8-401; Troy Woolen Co., 8-412; Tiffany v. Boatman's Savings Inst., 9-245.

Contribution. Williams, 2-83.

Conveyance. Wynne, 4-23; Edmonson v. Hyde, 7-1; Fisher v. Henderson et al., 8-175; Catlin v. Hoffman, 9-342; Redmond & Martin, 9-408; Beecher v. Clark, 10-385.

Corporation. Lady Bryan Mining Co., 4-394; Allen v. Soldiers' Despatch Co., 4-537; Judson v. Kelty et al., 6-165; Nat. Iron Co., 8-422; Mendenhall, 9-497.

Cost and Fees. James McIntire, 1-11; Anonymous Cases, 1-122; Wm. O'Kell, 1-303; Wm. Griffin, 1-371; Louisa Heirschberg, 1-642; Williams, 2-88; Gordon, McMillan & Co. v. Scott & Allen, 2-86; Mealey, 2-128; Lane, 2-309; Schwab, 2-488; Whitehead, 2-599; Fortune, 2-662; Bond, 3-7; Robertson & Chamberlain, 3-70; Pegues, 3-80; Montgomery, 3-187; Mallory, 4-153; Stubbs, 4-376; Eldridge, 4-498; Carow, 4-544; Burkholder et al. v. Stump, 4-597; Sawyer & Scott, 5-54; Comstock & Young, 5-191; Skelley, 5-214; Stevens, 5-298; Dundore v. Coates & Bro., 6-304; Cohn, 6-379; Preston, 6-545; Nounan & Co., 7-15; Jaycox & Green, 7-140; Raynor, 7-527; Hope Mining Co., 7-598; Frazier & Fry v. McDonald, 8-237; Sweet et al., 9-48; Comstock et al., 9-88; Jones, 9-491.

Counsel. Evans, 3-261; Woodward & Woodward, 3-719; Finn, 8-525.

Counter-Claim. Osage Valley and South Kan. R. R. 9-281.

Counter-Indebtedness. Kingsley, 7-558 ; Atkinson v. Kellogg, 10-535.

Countersigning Checks. Clemens, 9-57 ; Clark, 9-67.

Courts. Markson & Spaulding v. Heaney, 4-511 ; Jobbins v. Montague et al., 6-509.

Creditors. Wm. D. Hill, 1-16 ; Anon. Cases, 1-122 ; James T. Ray, 1-208 ; Geo. S. Mawson, 1-437 ; Strauss, 2-48 ; Black & Secor, 2-171 ; Mead v. National Bank of Fayetteville, 2-173 ; Briscow, 2-226 ; Adams, 2-273 ; Robinson, 2-341 ; Bigelow & Kellogg, 2-371 ; Needham, 2-387 ; Kerr, 2-388 ; Avery v. Johann, 3-144 ; Mebane, 3-347 ; Snedaker, 4-168 ; Smith v. Buchanan et al., 4-397 ; Swope et al. v. Arnold, 5-148 ; Hood et al. v. Cowper et al., 5-358 ; Vetterlien et al., 6-518 ; Emery et al. v. Canal Nat. Bank, 7-217 ; Brent, 8-444 ; Prescott, 9-385 ; Scull, 10-166 ; Hymes, 10-434 ; Allen v. Montgomery et al., 10-504.

Custody of Property. Hunt, 2-540 ; Gardner v. Cook, 7-346 ; Steadman, 8-319 ; Phelps v. Sellick, 8-390 ; Howes & Macy, 9-423.

Death. O'Farrell, 2-484 ; Gunike, 4-92.

Debt. Darius Tallman, 1-462 ; C. D. Tuttle v. D. W. Truax, 1-601 ; Kimball, 2-204 ; Ghirardelli, 4-164 ; W. B. & J. F. Alexander, 4-178 ; Loder, 4-190 ; Forsyth v. Woods, 5-78 ; Ellerhorst & Co., 5-144 ; Skelly, 5-214 ; Curran et al. v. Munger et al., 6-33 ; Elfeit v. Snow et al., 6-57 ; Mansfield, 6-388 ; Haake, 7-61 ; Swift, 7-591 ; Schumpert, 8-415 ; Bank of Madison, 9-184 ; Dingee v. Becker, 9-508 ; The Ansonia Brass and Copper Co. v. The New Lamp Chimney, 10-355.

Deed of Trust. Seaver v. Spink, 8-218 ; McGready v. Harris, 9-135.

Defense. Perkins v. Gay, 3-772 ; Doyle, 3-782 ; O'Connor v. Parker, et al., 4-713 ; Prescott, 9-385.

Deficiency. Iron Mountain Co. of Lake Champlain, 4-645.

Delay. Littlefield & Co. v. Delaware & Hudson Canal Co., 4-258 ; Bartholomew v. West et al., 8-12.

Demand. Chappel, 4-540.

Denial of Bankruptcy. Skelly, 5-214.

Deposit. Anonymous Cases, 1-122 ; Masterson, 4-553 ; Petrie et al., 7-382.

Depositions. Strauss, 2-48 ; Hunt, Tillinghast & Co. v. Pooke & Steere, 5-161.

Different District. Jas. Seymour, 1-29 ; H. H. & J. B. Richardson, 2-202 ; Sherman et al v. Bingham et al., 5-34 ; Warren & Charles Leland, 5-222 ; Boston, Hartford & Erie R. R. Co., 6-210 ; Jobbins v. Montague et al., 6-509 ; Hyslop v. Hoppock, 6-557 ; Goodall v. Tuttle, 7-198 ; Cameron v. Camio & Co., 9-527.

Disallowing Claims. Pittock, 8-78.

Discharge. Adolph Baum, 1-5 ; Hugh Campbell, 1-64 ; Anon. Cases, 1-122 ; Moses Selig, 1-186 ; Anonymous, 1-219 ; Wm. H. Hughes, 1-226 ; Mawson, 1-265 ; Robert C. Rathbone, 1-294 ; Chas. H. McIntire, 1-436 ; Luther Sheppard, 1-439 ; Alfred Beardsley, 1-457 ; Isaac Rosenfield, 1-575 ; Wright & Peckham, 2-41 ; Anonymous, 2-68 ; Andw. P. Van Tuyl, 2-70 ; Bashford, 2-73 ; Harris, 2-105 ; John S. Wright, 2-142 ; Stokes, 2-212 ; Rosenberg, 2-286 ; Solomon, 2-285 ; Wyatt, 2-288 ; Greenfield, 2-311 ; Needham, 2-387 ; Bodenheim v. Adler, 2-419 ; Jorey & Sons, 2-668 ; Noonan & Connolly, 3-267 ; McKay et al., 4-66 ; Payne & Brother v. Abell et al., 4-220 ; Seay, 4-271 ; Keefer, 4-389 ; Coray et al., v. Ripley, 4-503 ; Bound, 4-510 ; Cassard et al., v. Kromer, 4-569 ; Creditors v. Williams, 4-580 ; Burper et al., v. Sparhawk, 4-685 ; Farrell, 5-125 ; Rainsford, 5-381 ; Blaisdell et al., 6-78 ; Humble & Co. v. Carsen, 6-84 ; Kahley et al., 6-189 ; Belden, 6-443 ; Shower, 6-586 ; Vinton, 7-138 ; Meyer v. Aurora Ins. Co., 7-191 ; Lincoln & Cherry, 7-384 ; Herschman, 7-604 ; Grover & Baker v. Clinton, 8-312 ; Jones & Cullen v. Knox, 8-559 ; Alston v. Robinett, 9-74 ; Dole, 9-193 ; Coit v. Robinson et al., 9-289 ; Pierson, 10-107, 193 ; Witkowski, 10-209 ; Holyoke v. Adams, 10-270 ; Cole v. Roach, 10-288 ; C. J. Francke, Jr., & C. F. Francke, 10-438 ; Griffiths, 19-456 ; Perkins et al., 10-529 ; King, 10-566.

Discontinuance of Bankruptcy. Wm. D. Miller, 1-410 ; Litchfield, 9-506 ;

Buchanan, 10-97; Lacey, Downs & Co., 10-478.

Discovery. Garrison v. Marksley, 7-246.

Discretion. Williams, 2-83; Cook v. Waters et al., 9-155.

Dismissal of Petition. Benjamin H. Hatcher, 1-390; Osage Valley & Southern Kansas R. R. Co., 9-281.

Dismissal of Proceedings. Bieler, 7-552; Mendenhall, 9-380.

Disputed Title. Graves, 1-237; G. W. Pennington v. Sale & Phelan et al., 1-572; Smith v. Mason, 6-1.

Distribution. Owen Byrne, 1-464; Downing, 3-748; Masterson, 4-553; Lathrop et al., 5-43; Bucyrus Machine Co., 5-303; White v. Jones, 6-175; Goedde & Co., 6-295; Smith v. Kehrr, 7-97; King, 9-140; W. P. Long & Co., 9-227; Stephenson v. Jackson, 9-255; Stuyvesant Bank, 9-318; Rice, 9-373.

Deed. St. Helen's Mill Co., 10-415.

Distress. Brock v. Terrell, 2-643; Joslyn et al., 3-473.

District Court. R. H. Barrow & Co., 1-481; Thos. F. Bowie, 1-628; Mitteldorfer & Co., 3-39; Leighton v. Kelsey, 4-471; Sweat v. Boston, Hartford & Erie R. R. Co., 5-234; Scammon v. Cole et al., 5-257; Mallory, 6-22; Independent Ins. Co., 6-169; Kennedy & McIntosh, 7-337; Bachman & Packard, 7-353; Woods et al. v. Buckwell et al., 7-405; Payson v. Dietz, 8-193; Fendlay, 10-251; Allen & Co. v. Montgomery et al., 10-504.

Dividend. Owen Byne, 1-461; Howard, Cole & Co., 4571; Jaycox & Green, 7-303; Sheehan, 8-345; Atkinson v. Kellogg, 10-535.

Domicile. Wm. S. Walker, 1-386.

Doubtful Claim. Jones, 2-59.

Dower. Bakewell, 4-619; Cox v. Wilder et al., 5-443; Cox v. Wilder et al., 7-241.

Drawee. Hunt et al. v. Taylor et al., 4-683.

Earnings of Bankrupt. Mays v. Manufacturers' Bank, 4-446; Idem, 4-660.

Encumbered Property. J. McClellan, 1-389; R. H. Barrow & Co., 1-481; Salmon, 2-56; Foster et al. v. Ames et al., 2-455; Wynne, 4-23; Kahley et al., 4-378.

Endorser. Crawford, 5-301; Clemens, 8-279; Clemens, 9-57.

Enforcing Lien. Appleton v. Bowles et al., 9-354.

Equity Proceedings. Donelson, 1-181; Alexander T. Stewart v. Siegfried Isidor et al., 1-485; Darby's Trustees v. Brooklyn Savings Institution, 4-601; Scammon v. Cole et al., 5-257; Taylor v. Rasch & Burnap, 5-399; Ulrick et al., 8-15; Knickerbocker Insurance Co. v. Comstock, 9-484.

Error. Lawrence v. Graves, 5-279.

Estoppel. Wm. H. Langley, 1-559; Spice v. Peckham, 3-513; Massachusetts Brick Co., 5-408; Kreuger et al., 5-439; Republic Ins. Co., 8-97.

Evidence. Devoe, 2-27; Rosenfield, Jr., 2-117; Broadhead, 2-278; Newman, 2-302; Hussman, 2-438; Morgan, Root & Co. v. Mastick, 2-531; Babbitt v. Walbrun & Co., 4-121; Kahley et al., 4-378; Tenny & Gregory v. Collins, 4-477; Martin v. Toof, Phillips & Co., 4-488; Skelley, 5-214; Lake, 6-542; Warner et al., 7-47; Dunkle & Driesbach, 7-72; Woods, 7-126; Francis & Buchanan, 7-359; Hudson v. Bingham, 8-494; Jelsh & Dunneback, 9-412; St. Helen's Mill Co., 10-414.

Examination. Samuel W. Levy v. Mark Levy, 1-107; Charles G. Patterson, 1-147; Moses Seeley, 1-186; Freidenburg, 1-268; Isaac Seckendorf, 1-626; Adams, 2-95; Mealey, 2-128; Cuyler, 2-650; Gilbert, 3-152; Belden & Hooker, 4-194; Paddock, 6-396.

Examination of Bankrupt. James McIntire, 1-11; Charles G. Patterson, 1-100; Same, 1-150; George S. Mawson, 1-271; Benjamin Sherwood, 1-345; Andrew P. Van Tuyl, 2-70; John S. Wright, 2-142; Lanier, 2-154; McBreen, 2-197; Adams, 2-273; Brandt, 2-345; Robinson v. Chamberlain, 2-516; Littlefield, 3-57; Craig, 3-100; Orem & Co. v. Harley, 3-263; Bromley & Co., 2-686; Clark et al., 4-237; Vetterlein, 4-599; Pioneer Paper Co., 7-250; Stuyvesant Bank, 7-445; Heath & Hughes, 7-448; Dole, 7-538; Kingsley, 7-558; Dole, 9-193.

Executors. Graves et al. v. Winter et al., 9-357.

Execution Creditor. Dunkle & Driesbach, 7-72; Atkinson, 7-143.

Execution. Charles E. Beck, 1-588; John P. Smith v. James Smith, 1-599; Wilbur, 3-276; Hambright, 2-499; Weeks, 4-364; Davis v. Anderson et al., 6-146.

Exemption. Rupp, 4-95; Hester, 5-285;

Kean et al., 8-367; Dillard, 9-8; Jordan, 10-427.

Expenses. Rosenfield, Jr., 2-117; Schwab, 2-488.

Expenses, Petitioners'. Williams, 2-83.

Expunging Proof. Morris Kyler, 2-650; Firemen's Ins. Co., 8-223.

Extension of Note. Granger & Sabin, 8-30.

False Representations. Elfeit et al. v. Snow et al., 6-57; Upton v. Hasbrouck, 10-307.

False Swearing. Robert C. Rathbone, 1-536.

Fees. John Bellamy, 1-96; Sidle, 2-221; New York Mail Steamship Co., 2-423; Kyler, 2-650; Evans, 8-261.

Feme Sole. Boyd, 5-199.

Fiduciary Debt. James W. Seymour, 1-29; March v. Heaton & Hubbard, 2-180; Kimball, 2-204; Clark, 3-17; Croman v. Cotting, 4-667; Lenke v. Booth, 5-351.

Fiduciary Capacity. Smith, 2-297; Kimball, 2-354.

Fifty Per Cent. Rockwell & Woodruff, 4-243; Borden & Geary, 5-128; Graham, 5-155; Kahley et al., 6-389; Van Riper, 6-573; Vinton, 7-138; Lincoln & Cherry, 7-334; C. J. Francke, Jr. v. C. F. Francke, 10-438.

Finishing Chattel. Foster v. Ames, 2-455.

Fire Insurance. Rosenfield, Jr., 2-117.

First Meeting of Creditors. Julius Hays, 1-21; Patrick C. Devlin & John Hagan, 1-35; Norton, 6-297.

Fixtures. Ex parte Morrow in re Young, 2-665; Hitching, 4-384; Eldridge, 4-498; Ames, McKay & Aldus, 7-230.

Foreclosure. Donaldson, 1-181; Lee v. Saving Inst., 8-218; Iron Mountain Co., 4-646; Frizzeli, 5-122; Goddard v. Weaver, 6-440; Casey, 8-72; Whitman v. Butler, 8-487; Phelps v. Sellick, 8-390; Sutherland et al. v. Lake Superior Ship Canal R. R. Iron Co., 9-299.

Foreign Creditors. Julius Hays, 1-21; Haley, 2-36; Strauss, 2-48; Bugbee, 9-258.

Foreign Tribunals. Moesselman & Poelart v. Caen, 10-513.

Four and Six Months. G. W. Penington v. J. H. Lowenstein et al., 1-570; Wash-

ington Marine Insurance Co., 2-648; Bowman v. Harding, 4-20; Collins v. Gray et al., 4-681; Haskell v. Ingalls, 5-205; Sawyer et al. v. Turpin et al., 5-339; Hood et al. v. Carter et al., 5-358; Raynor, 7-527; Seaver v. Spink, 8-218; Hyde v. Sontag & Eldridge, 8-225; Thornhill & Co. v. Link, 8-521; Britton & Payen et al., 9-445; Lane & Co., 10-135; Miller v. Bowles et al. & Appleton v. Stevens, 10-515; Sleek et al. v. Turner, 10-580.

Fourteen Days. Baldwin et al. v. Wilder et al., 6-85; Laner, 9-494.

Fraud. Darius Tallman, 1-462; Rathbone, 2-261; Kingsbury et al., 3-318; Rogers, 3-564; Dumant, 4-17; Babbitt v. Walbrun & Co., 4-121; Munger & Champlin, 4-295; Gregg, 4-456; Hall v. Wager & Fales, 5-182; Frank, 5-194; Taylor v. Rasch & Bernhart, 5-399; Elfeit et al. v. Snow et al., 6-57; Sedwick v. Wormser, 7-186; United States v. Thomas, 7-188.

Fraudulent Conveyances. Jacob H. Mott & Jordan Mott, 1-223; Langley v. Perry, 2-596; Gillespie v. McKnight et al., 3-468; Adams, 3-561; Allen & Co. v. Massey et al., 4-248; Rison v. Knapp, 4-349; Johann 4-434; Barstow v. Peckham et al., 5-72; Freeland & Gerson v. Holloman et al., 9-331.

Fraudulent Credit. Doody, 2-201; Kimball, 2-204; Dreyer, 2-212; Sidle, 2-221.

Fraudulent Debts. Henry Jacoby, 1-118; George W. Kimball, 1-193; Charles G. Patterson, 1-307; Isaac Rosenfeld, 1-575; Wright & Peckham, 2-41; Pettis, 2-44; Bashford, 2-73; John S. Wright, 2-142; Stewart v. Emerson, 8-462.

Fraudulent Judgment. Shaffer v. Fritchery & Thomas, 4-548.

Fraudulent Payment. James Black & William Secor, 1-353; Morgan, Root & Co. v. Mastick, 2-521; Fitch et al. v. Sawyer & McGee, 2-531.

Fraudulent Preference. S. & M. Burns, 1-174; John T. Drummond, 1-231; Lawson, 2-396; Rogers & Coryell, 2-397; Haughey v. Albin, 2-399; Armstrong v. Rickey Bro., 2-473; Miller v. Keys, 8-225; Driggs, assignee, v. Moore et al., 8-602; Linn v. Smith, 4-47; Bank of India, etc. v. Evans et al., 4-186; Street v. Dawson, assignee, 4-207; Richter's Est., 4-222; Vogel v. Lathrop, 4-439; Cookingham v. Ferguson, 4-636; Curran et al. v. Munger et al.,



6-33; Stephens, 6-538; Bean v. Brookmire & Rankin, 7-568; Stobaugh v. Mills & Fitch, 8-361; Mitchell v. McKibben 8-548; Weaver, 9-182.

**Fraudulent Suspension.** McDermott Pat. Bolt Manufacturing Co., 3-128; Thompson & McClallen, 3-185; Heinsheimer et al. v. Shea & Boyle, 3-187; Sohoo, 3-216; Hardy, Blake & Co. v. Bininger & Co., 4-262.

**Fraudulent Sale.** Foster v. Hackley & Sons, 2-406; Hussman, 2-488; Bolander v. Gentry, 2-656; United States v. Clark, 4-59; Walbrun et al. v. Babbitt 9-1.

**Fraudulent Transfers.** Walter H. Waite & E. J. Crocker, 1-373; Owen Byrne, 1-464; Hollensshade, 2-651; Lawrence v. Graves, 5-279; Toof et al. v. Martin, 6-49; Winter v. Iowa, Minnetona & North Pacific Railway Company, 7-289.

**Gaming.** Marshall, 4-106.

**Gold Coin.** Edmondson v. Hyde, 7-1.

**Habeas Corpus.** Devoe, 2-27.

**Homestead.** Jackson & Pearce, 2-508; Beckerford, 4-204; Cox v. Wilder et al., 7-241; Vogle, 8-182; Fisher v. Henderson et al., 8-175; Everett, 9-90; Hall, 9-366; Poleman, 9-376; Kehr & Roach, 9-566; Woolfolk v. Murray & Bryan, v. Sims, 10-540.

**Husband and Wife.** Karr v. Whittaker, 5-123; Sedgwick v. Place et al., 5-168; Hartell, 7-559.

**Illegal Promise.** Austin v. Markham, 10-548.

**Impeaching Discharge.** Commonwealth v. Walker et al., 4-672.

**Imprisonment.** James W. Seymour, 1-29; Henry Jacoby, 1-118; Geo. W. Kimball, 1-193; Wm. A. Walker, 1-318; Hunt, Tillinghast & Co. v. Pooke & Steere, 5-161; United States v. Pusey, 6-284.

**Indemnity.** Ames McKay & Aldus, 7-230.

**Indictment.** U. S. v. Clark, 4-59; U. S. v. Prescott et al., 4-113; Commonwealth v. Walker et al., 4-672.

**Influencing Creditors.** Geo. S. Mawson, 1-548.

**Influencing Proceedings.** Austin v. Markham, 10-548.

**Injunction.** Francis Schnepf, 1-190; Grow v. Ballard et al., 2-194; Kerosene Oil Co., 2-529; Bloss, 4-147; Hanna, 4-411; Karr v. Whittaker, 5-123; Platt v. Archer, 6-465; Keenan v. Shannon et al., 9-441; Penny v. Taylor, 10-201; Fendley, 10-251.

**Insanity.** McKenzie & Brown v. Harding, 4-89; Alonzo Murphy, 10-48.

**Insolvency.** James Black v. Wm. Secor, 1-353; Asa W. Craft, 1-378; Joseph Haughton, 1-460; Wilson v. Brinkman et al., 2-468; Farrin v. Crawford et al., 2-602; Rison v. Knapp, 4-349; Shaffer v. Fritchery & Thomas, 4-548; Hall v. Wager & Fales, 5-182; Sawyer et al. v. Turpin et al., 5-339; Wilson v. City Bank of St. Paul, 5-270; Curran et al. v. Munger et al., 6-33; Buchanan v. Smith, 7-513.

**Insolvent Laws.** Wm. H. Langley, 1-559; Martin v. Berry, 2-629; Thornhill & Williams et al. v. Bank of Louisiana, 3-435; Meekins et al. v. Creditors, 3-511; Reed Brothers & Co. v. Taylor et al., 4-710.

**Insurance.** Starkweather v. Ins. Co., 4-341; Carow, 4-544; Sands' Ale Brewing Co., 6-101; Republic Ins. Co., 8-197; Upton v. Burnham, 8-221; Newland, 9-62.

**Intent.** Belden, 2-42; Morgan, Root & Co. v. Mastick, 2-521; Langley v. Perry, 2-596; Goldsmith, 3-165; Brandt, 3-324; Rison v. Knapp, 4-349; Gregg, 4-455; J. J. & C. M. Walton, 4-467; Cookingham v. Ferguson, 4-636; Cookingham et al. v. Morgan et al., 5-16; Hood et al. v. Carper et al., 5-358; Stobaugh v. Mills & Fitch, 8-361; Catlin v. Hoffman, 9-342; Appleton v. Bowles et al., 9-354; Beecher v. Clark et al., 10-385.

**Interest.** Freeman Orne, 1-57; Martin, assignee, v. Toof, Phillips & Co., 4-488, Darby's Trustees v. Boatman's Savings Institution, 4-601; Haake, 7-61; Town, 8-38; Pittock, 8-78; Riggs, Lechtenberg & Co., 8-90; Sedgwick v. Lynch, 8-289; Bank of North Carolina, 10-289; Edward Hagan, 10-383; Receiver of Ocean National Bank v. Estate of Wild, 10-568.

**Interlocutory Order.** Casey, 8-72.

**Intervening Creditor.** Buchanan, 10-97

**Inventory.** Wm. D. Hill, 1-16.

**Involuntary Bankruptcy.** W. B. & J. T. Alexander, 4-178; Valliquette, 4-307.



Involuntary Proceedings. Warren Savings Bank v. Palmer & Co., 10-239.

Irregularity. Hall, 2-192

Joint Creditors. Jas. J. Purvis, 1-163; Owen Byrne, 1-464; Meade v. National Bank of Fayetteville, 2-173; Bigelow v. Kellogg, 2-371; Howard Cole & Co., 4-571; Gray v. Rollo, 9-337.

Joint Liability. Samuel W. Levy & Mark Levy, 1-327.

Joint Tenants. Hotchkiss, 9-488.

Judge. Anonymous, 1-216; John Sime & Co., 7-407.

Judgment. Wm. H. Knoepfel, 1-70; S. & M. Burns, 1-174; Francis Schnepf, 1-190; Samuel W. Levy & Mark Levy, 1-327; Walter H. Waite v. E. J. Crocker, 1-373; G. W. Pennington v. Sale, Phelan et al., 1-572; John P. Smith & Jas. Smith, 1-599; Pettis, 2-44; Bidwell, 2-229; Robinson, 2-341; Kerr, 2-388; Armstrong v. Rickey Brothers, 2-473; McIntosh, 2-506; Avery v. Johann, 3-144; Beattie v. Gardner et al., 4-323; Weeks, 4-364; Andrews v. Graves, 4-652; Merritt v. Glidden et al., 5-157; Humble & Co. v. Carson, 6-84; Lady Bryan Mining Co., 6-252; Traders' Nat'l Bank v. Campbell, 6-353; Mansfield, 6-888; Jordan, 8-180; Wilson v. City Bank of St. Paul, 9-97; Catlin v. Hoffman, 9-342; Partridge v. Dearborn et al., 9-474; Zahn et al. v. Fry et al., 9-546.

Judgment Creditor. Bloss, 4-147; Stevens, 4-367; Johann, 4-434; Klancke, 4-648; John McGilton et al., 7-294; Reeser v. Johnson, 10-467.

Judicial Notice. Morris et al. v. Schwartz, 10-305.

Judicial Proceedings. Rooney, 6-163.

Jurisdiction. Hugh Campbell, 1-165; James M. Palmer, 1-213; Francis T. Prankard & William T. Prankard, 1-297; Wm. K. Belcher, 1-666; Kyler, 2-650; Alexander, 3-29; Foster & Pratt, 3-237; Mitchell et al., 3-441; Penn et al., 3-582; Fuller, 4-116; Lady Bryan Mining Company, 4-394; York & Hoover, 4-479; Markson & Spaulding v. Heaney, 4-511; Way V. Howe, 4-677; Wilson v. Capuro et al., 4-714; Davis, 4-716; Sampson v. Burton, et al., 5-459; State of North Carolina v. Trustees University et al., 5-466; Maltbie v. Hotch-

kiss, 5-485; Independent Insurance Company, 6-260; Sampson v. Blake & Co., 6-410; Platt v. Archer, 6-465; Bachman v. Packard, 7-353; Stuart v. Aumuelier, 8-541; Smith v. Little, 9-111; Citizens' Savings Bank, 9-152; Coit v. Robinson et al., 9-289; Cameron v. Camio, & Co., 9-527; Spaulding v. McGovern et al. 10-188; Fendley, 10-251.

Jury Trial. Shumate & Blythe v. Hawthorne, 3-228; Lawrence v. Graves, 5-279; Sherry, 8-142; Coit v. Robinson, 9-289; Warren Savings Bank v. Palmer & Co., 10-239.

Knowledge of Insolvency. Wright, 2-490; Rison v. Knapp, 4-349; Brook v. McCracken, 10-461.

Laches. Isidor & Blumenthal, 1-264; Republic Insurance Co., 8-317.

Landlord. Joslyn et al., 3-473; Butler, 6-501; Steadman, 8-319.

Lease. John Clancy, 10-215; Daniel F. Meanor et al. v. R. D. Everett, assignee of L. H. Clarke, 10-421.

Legal Process. William S. Walker, 1-386; Armstrong v. Rickey Bros., 2-473; Wilbur, 3-276; Hardy, Blake & Co. v. Bininger & Co., 4-262; Merchants' Insurance Company, 6-43.

Liability. Loder, 4-190; Jones v. Kenney et al., 4-650; Beam v. Laflin, 5-333; Munn, 7-468; Republic Insurance Company, 8-197; Mendenhall, 9-497.

Lien. Thomas F. Bowie, 1-628; Black & Secor, 2-171; Perdue, 2-183; Armstrong v. Rickey Brothers, 2-473; McIntosh, 2-506; Fortune, 2-662; Bryan, 3-110; High & Hubbard, 3-192; Scott, 3-742; Hutto, 3-787; Wynne, 4-23; Fuller, 4-116; Kahley et al., 4-378; Second National Bank of Leavenworth v. Hunt, assignee, 4-616; Iron Mountain Co. of Lake Champlain, 4-645; Trim ex-parte Marshall, Purcell v. Wagner et al., 5-23; Coulter, 5-64; Harvey v. Crane, 5-218; Warner et al., 5-414; White v. Jones, 6-175; Sampson v. Clark & Burton, 6-403; Stone ex-parte Godfred, 6-429; Preston, 6-545; John McGilton et al., 7-294; Mar-

shall v. Knox et al., 8-97; Stoddard v. Locke et al., 9-71; Stokes v. State of Georgia, 9-191; Sutherland et al. v. Lake Superior Ship Canal & Railroad Company, 9-299; Catlin v. Hoffman, 9-342; Ward, 9-349; Dyke & Marr, 9-430; Britton v. Payen et al., 9-445; Partridge v. Dearborne et al., 9-474; Shuey, 9-526; Allen & Co. v. Montgomery et al., 10-524.

Life Insurance. Rosenfield, 2-116; Newland, 7-477; Owen & Murrin, 8-6.

Limitation. Burke, 3-296; Terry & Cleaver, 4-126; Bean v. Brookmire & Rankin, 4-196; Peiper v. Harmer, 5-252.

Loans. Tiffany & Boatman's Saving Inst., 9-245.

Lumberman. Walter C. Cowles, 1-280.

Married Woman. Harris, 2-105; Driggs v. Russell et al., 3-161.

Marshal. Talbot, 2-280; Jobbins v. Montague et al., 6-117; Donohue & Page, 8-453; Howes & Macy, 9-423.

Marshaling of Assets. Jervis v. Smith, 8-594; Downing, 3-748; Lewis, 8-546.

Mechanics' Lien. Dey, 3-305; Merger Brown, 3-584.

Meetings of Creditors. Clark & Bininger, 6-194; Norton, 6-297; McDowell et al., 10-459.

Mileage. Gordon, McMillan & Co. v. Scott & Allen, 2-86.

Misjoinder. A. S. Spaulding v. J. McGoven & Wife & Miller Ford, 10-188.

Money. Jonathan J. Milner, 1-419; Lawson, 2-54; Thornton, 2-189; Bigelow et al., 2-556; Mills et al. v. Davis et al., 10-340.

Mortgages. Fortune, 3-312; Scott, 3-742; Potter et al. v. Coggeshall, 4-73; Harthorn, 4-103; Snedaker, 4-168; W. B. & J. F. Alexander, 4-178; Butler, 4-302; Kahley et al., 4-378; Scammon v. Cole, 5-257; Sawyer et al. v. Turpin et al., 5-339; Goddard v. Weaver, 6-440; Edmondson v. Hyde, 7-1; Ellerhorst et al., 7-49; Jordan, 9-416; Sedgwick v. Place, 10-28; St. Helen Mill Co., 10-415.

Name. William E. Townsend, 1-216.

National Bank. Addison Moore, 1-470;

Edward Bigelow et al., 1-667; Smith et al. v. Manufacturers' National Bank, 9-122.

Negotiable Paper. Lake Superior Ship Canal Co., 10-76; Bartholomew et al. v. Bean, 10-241; Maxwell v. McCune, 10-306.

New Promise. Kingsley, 1-329; Heman P. Harding, 1-395; Allen & Co. v. Ferguson, 9-481; Dusenbury v. Hoyet, 10-313.

Newspapers. Anonymous, 2-141.

New Trial. De Forest, 9-278.

Non-Payment of Note. William Mannheim, 7-342.

Non-suit. Woodail v. Austin & Halliday, 10-545.

Notary. Straus, 2-48.

Notice. Patrick C. Devlin and John Hagan, 1-35; William E. Townsend, 1-217; John S. Perry, 1-221; Hall, 2-192; Loder, 4-190; Kreuger et al., 5-439; Bush, 6-179; Walbrun et al. v. Babbitt, 9-1; Catlin v. Hoffman, 9-342; Maxwell v. McCune et al., 10-307.

Nunc Pro Tunc. Woolfolk, v. Gunn, 10-526.

Oath. Andrew J. Walker, 1-335.

Offset. City Savings Bank, 6-71.

Opposing Discharge. Isaac Sekcendorf, 1-626; Houghton, 10-337.

Order to Show Cause. John Bellamy, 1-64; Leonard, 4-563; Sampson v. Clark & Burton, 6-403.

Ordinary Course of Business. Davis & Green v. Armstrong, 3-34; Phelps v. A. B. & C. L. Clasen, 8-87; Butler, 4-303; Rison v. Knapp, 4-349.

Parties. Francis T. Prankard & Wm. Prankard, 1-297; Warren C. Abbe, 2-75; Camden Rolling Mill Co., 3-590; Gunther et al. v. Greenfield et al., 3-730; Herndon v. Howard, 4-212; Frizzelle, 5-122; Masterson v. Howard et al., 5-130; Thornhill & Williams v. Bank of Louisiana, 5-367; Bush, 6-179; Traders' Nat. Bank v. Campbell, 6-353; Sutherland et al. v. Lake Superior Ship Canal Railroad & Iron Co., 9-299; Spaulding v. McGovern et al., 10-188; Simmons, 10-254; Kent & Co. v. Downing, 10-538.

**Partners.** Alexander Frear, 1-660; Warren C. Abbe, 2-75; Mittledorfer & Co. ex-parte Rutherglen, 3-39; Sigsby v. Willis, 3-208; Hartough et al., 3-423; Scofield et al., 3-551; Penn et al., 5-30; Forsyth v. Woods, 5-78; Stevens, 5-112; Hunt, Tillinghast & Co. v. Pooke & Steere, 5-161; Warren & Charles Leland, 5-222; Bucyrus Machine Co., 5-308; Warner et al., 7-47; Daggett, 8-433; Buckhause & Gouge, 10-206.

**Partnership.** Anonymous Cases, 1-122; Francis C. Prankard & Wm. Prankard, 1-297; Wm. H. Little, 1-841; Owen Byrne, 1-464; Frederick Jewett, 1-495; Crockett et al., 2-208; Webb & Johnson, 2-614; Forsyth & Murtha, 7-174; Van Kamp Bush v. Josiah Crawford, 7-299; Kinkead, 7-439; Munn, 7-468; Moore et al. v. Walton et al., 9-402; McFarland & Co., 10-381.

**Partnership Estates.** Frederick Jewett, 1-491; Alexander Frear, 1-660; Kahley et al., 4-378; Forsyth v. Woods, 5-78; Hunt, Tillinghast & Co. v. Pooke & Steere, 5-161; Warren & Charles Leland, 5-222; Price, 6-400; Weaver, 9-132; Stephenson v. Jackson, 9-255; W. P. Long & Co., 9-227.

**Patent Defects.** John Pulver, 1-47.

**Payments.** Rosenfield, Jr., 2-117; Webb & Johnson, 2-614; Williams, 3-286; Maurer v. Frantz, 4-431; Gregg, 4-456; Chappel, 4-540; Mays v. Manf. Bank, 4-660; O'Connor v. Parker, 4-713; Marcer, 6-351; Edmonson v. Hyde, 7-1; Wm. H. Halleman v. Dewey, assig. of Bank of North Carolina, 7-269; Babbitt v. Burgess, 7-561; Brent, 8-444; Opinion Atty-Gen'l, 9-117; Bartholomew et al. v. Bean, 10-241.

**Payment into Court.** Wilkison, 3-286.

**Penalties.** Rosenberg, 2-286; Rosey, 8-509; Cook v. Waters et al., 9-155.

**Perishable Property.** Henry F. Metzger & Thomas G. Copperthwaite, 1-39.

**Personal Services.** John Pulver, 1-47.

**Petition.** Anonymous, 1-122; Anon., 1-215; P. & H. Lewis, 1-239; Lady Bryan Mining Co., 4-394; Raynor, 7-527.

**Petition for Review.** Beecher v. Bininger et al., 3-489; Boston, Hartford & Erie R. R. Co., 6-210; Butterfield, 6-257; Sampson v. Blake et al., 6-401; Idem, 6-410; Hill, 10-133; Keeler, 10-419; Lacey, Downs & Co., 10-478.

**Pleading.** John T. Drummond, 1-231; Alfred Beardsley, 1-304; Nathan A. Low, 1-310; Robert C. Rathbone, 1-324; Geo. S. Mawson, 1-437; Joseph Horton, 1-460; Frederick C. Crowley & Wm. S. Hoblitz, 1-516; Sutherland, 1-531; Dunham & Orr, 2-17; Cone & Morgan, 2-21; Craft, 2-111; Bolander v. Gentry, 2-656; Randle & Sutherland, 3-18; Phelps v. A. B. & C. L. Clasen, 3-87; Payne & Bro. v. Abel et al., 4-220; Littlefield v. Delaware & Hudson Canal Co., 4-258; Keefer, 4-389; Corey et al. v. Ripley, 4-503; Chappel, 4-540; Commonwealth v. Walker et al., 4-672; Ala. & Chattanooga R. R. Co. v. Jones, 5-98; Merrill v. Gledde et al., 5-157; Skelley, 5-214; Taylor v. Rasch & Bernhart, 5-399; White v. Jones, 6-175; Independent Ins. Co., 6-260; Jobbins v. Montague et al., 6-509; Safe Deposit & Savings Institution, 7-393; Babbitt v. Burgess, 7-561; Penn et al., 8-93; Sherry, 8-142; Haydette, 8-333; Hawkeye Smelting Co., 8-385; Robinson v. Pesant, 8-426; Stewart v. Emerson, 8-462; Medbury v. Swan, 8-537; Stuart v. Aumuller et al., 8-541; Batchelder v. Lowe, 8-571; Connor Southern Express Co., 9-138; Staplin, 9-142; Cook v. Waters et al., 9-155; Burfee v. First National Bank of Janesville, 9-314; Redmond & Martin, 9-408; Fendley, 10-250; Dusenbury v. Hoyet, 10-318.

**Pledge.** Jenkins, assignee, v. Mayer, 3-777; G. B. Grinnell & Co., 9-29, 9-137; Harlow, 10-280.

**Policy.** Bush, 6-179.

**Policy of Insurance.** Newland, 7-477.

**Possession of Funds.** Smith v. Mason, 6-1.

**Postponing Proof.** Ogden Smith, 1-243.

**Power of Sale.** Lockett v. Hoge, 9-167.

**Practice.** Adolph Baum, 1-5; Samuel W. Levy & Mark Levy, 1-105; Anonymous Cases, 1-122; Samuel W. Levy & Mark Levy, 1-136; Chas. G. Patterson, 1-161; Francis Schnepf, 1-190; Anonymous, 1-219; Benj. Sherwood, 1-345; Jas. Black & Wm. Secor, 1-353; J. W. Wright, 1-393; John Morgenthal, 1-402; Irving v. Hughes, 2-62; Warren C. Abby, 2-75; Adams, 2-95; John S. Wright, 2-142; Brisco, 2-226; Bidwell, 2-229; Rosenberg, 2-236; Bell v. Beckwith et al., 2-242; Smith, 2-297; Hawkins v. Nat. Bank of Fayetteville, 2-338; Brandt, 2-345; Ma-

chad, 2-352; Davis et al., 2-392; Jackson & Pearce, 2-508; Soldiers' Business Messenger and Despatch Co., 2-519; Gainey, 2-525; Hunt, 2-540; Washington Marine Ins. Co., 2-648; Coleman, 2-672; Davis & Green v. Armstrong, 3-34; Rosenberg, 3-74; Columbian Metal Works, 3-75; Schepler et al., 3-171; Vogel, 3-198; Sigby v. Willis, 3-208; New York Mail Steamship Co., 3-280; Ballou, 3-717; Dibblee et al., 3-754; Solis, 3-761; Norris, 4-35; Maxwell et al. v. Faxton et al., 4-210; Olmstead, 4-240; Moore & Brother v. Harley, 4-243; Benjamin v. Graham, 4-391; Price, 4-406; Johann, 4-434; Zinn, et al., 4-436; Gallinger, 4-729; York & Hoover, 4-479; Carow, 4-544; Burkholder v. Stump, 4-597; Vetterlien, 4-599; Andrews v. Graves, 4-652; Baldwin v. Raplee, 5-19; Frizelle, 5-119; Merrill v. Glidden et al., 5-157; Sweat v. Boston, Hartford & Erie R. R. Co., 5-234; Carson, 5-290; Hanna, 5-292; Gallison et al., 5-353; Cox v. Wilder, et al., 5-443; Smith v. Mason, 6-1; Curran et al. v. Munger et al., 6-33; Blaisdell et al., 6-78; Rogers v. Winsor, 6-246; Jaycox & Green, 7-303; Perkins, 8-56; Firemen's Ins. Co., 8-123; Knickerbocker Ins. Co. v. Comstock, 8-145; Haydette, 8-333; Findlay, 9-83; Sabin, 9-383; Bartusch, 9-478; Newland, 9-62; Hymes, 10-434.

**Precedents.** Knight, 8-436.

**Preference.** Merchants' National Bank of Hastings v. Daniel W. Truax, 1-545; Grow v. Ballard et al., 2-194; Sidle, 2-221; Metzger, 2-355; Forsaith v. Merritt, 3-48; Ahl et al. v. Thorner, 3-118; Scammon v. Cole & Hooper, 3-393; Davidson, 3-418; Campbell v. Traders' Nat'l Bank et al., 3-498; Tonkin v. Trewatha, 4-52; Rison v. Knapp, 4-349; Stevens, 4-367; Maurer v. Frantz, 4-431; Vogel v. Lathrop, 4-439; Gregg, 4-456; J. J. & C. M. Walton, 4-467; Eldridge, 4-498; Second National Bank of Leavenworth v. Hunt, 4-616; Fales, 5-182; Scammon v. Cole et al., 5-257; Massachusetts Brick Co., 5-408; Bingham v. Richmond & Gibbs, 6-127; Trader's National Bank v. Campbell, 6-353; Forsyth & Murtha, 7-174; Republic Ins. Co., 8-197; Leland et al., 9-209.

**Preferred Creditor.** Powell, 2-45; Kipp, 4-593; Jones v. Kinny et al., 4-650; Stuyvesant Bank, 6-272; Sixpenny Bank v. Estate of Stuyvesant Bank, 10-399.

**Present Consideration.** C. D. Tuttle v. D. W. Truax, 1-601.

**Presumption of Law.** Hall v. Wager & Fales, 5-182.

**Printer's Fees.** Cost, etc., 1-25; Principal and Agent Troy Woolen Company, 8-412.

**Principal and Surety.** Perkins et al., 10-529.

**Priority.** Elijah E. Winn, 1-499; Webb & Johnson, 2-614; Jordan, 3-182; Lacey, 4-62; Harthorn, 4-103; Terry & Cleaver, 4-126.

**Property of Bankrupt.** Wynne, 4-23; Freeman, 4-64; Janeway, 4-100; Babbitt v. Walbrun & Co., 4-121; Harthill, 4-392; Mays v. Manufacturers' National Bank of Philadelphia, 4-446; Silverman, 4-523; Warren & Charles Leland, 5-222; Nounan & Co., 6-579, 7-15; Dunkle & Driesbach, 7-72; Ira Hay et al., 7-344; Austin v. O'Reilly, 8-129; Wilson v. Childs, 8-527; Stuyvesant Bank, 9-318.

**Privilege.** Woodward & Woodward, 3-719; Appleton v. Bowles et al., 9-354; McConnell, 9-387.

**Proceedings in Bankruptcy.** Isaac Seckendorf, 1-626; Wallace, 2-134; Fallon, 2-277; Darby, 4-309; York & Hoover, 4-479; Alabama and Chattanooga R. R. Co. v. Jones, 5-98; Farrel, 5-125; Bromley v. Smith et al., 5-152; Warren & Charles Leland, 5-222; Noonan & Co., 7-15; Frazier & Fry v. McDonald, 8-237; Republic Ins. Co., 8-317.

**Procuring Property to be Taken.** Black & Secor, 1-353; Asa W. Craft, 1-378.

**Proceedings in Rem.** Ship "Edith," 6-449.

**Production of Books and Papers.** Mendenhall, 9-285.

**Promissory Note.** Cornwall, 4-400; O'Conner v. Parker, 4-713; Talcott & Souther, 9-502.

**Proof of Debt.** William D. Hill, 1-16; Charles G. Patterson, 1-101; Anonymous, 1-219; Taylor R. Stewart, 1-278; Samson D. Bridgman, 1-312; Edward Biglow et al., 1-632, 1-667; Brown, 3-584; Herman & Herman, 3-618, 3-649; Loder, 3-655; Chamberlain & Chamberlain, 3-710; Murray, 3-765; Linn et al. v. Smith, 4-47; Belden & Hooker, 4-194; Darby, 4-211; Hanna, 4-411; Angiers, 4-619; Bromby v. Smith et al., 5-152; Frank, 5-194;

Preston, 5-293; Overton, 5-366; Van Camp Bush v. Josiah Crawford, 7-299; Hanna, 7-502; Jaycox & Green, 7-578; G. B. Grinnell & Co., 9-29; Trowbridge, 9-274; Tesson et al., 9-378; First National Bank v. Cooper et al., 9-529; J. F. & C. R. Parkes, 10-82.

Protection. Adams, 2-273.

Provable Debt. Benjamin F. Metcalf & Samuel Duncan, 1-201; James T. Ray, 1-203; Jonathan J. Milner, 1-419; Luther Shepherd, 1-439; Rankin & Pullman et al. v. Florida R. R. Co., 1-647; Williams, 2-229; Rosenberg, 2-236; Heman P. Harden, 1-395; Crawford, 3-698; Frost & Westfall, 3-736; Bloss, 4-147; Loder, 4-190; Shaffer v. Fritchery & Thomas, 4-548; Blandin, 5-39; Crawford, 5-301; Hunt & Hornell, 5-433; Hennocksburg & Block, 7-37; Forsyth & Murtha, 7-174; Gardner v. Cook, 7-346; Town et al., 8-38; Mitchell, 8-47; Rigg, Lechtenburg & Co., 8-90; Derby, 8-106; Rigg v. Magwire, 8-484; Rosey, 8-509; May & Merwin, 9-419; Talcott & Souther, 9-502; Chandler, 9-514; Jones et al., 9-556; Buckhause & Gouge, 10-206; Cole v. Roach, 10-288.

Provisional Warrant. Hugh Campbell, 1-166; Irving v. Hughes, 2-62.

Publication. Anonymous, 1-122.

Purchase of Claims. March v. Heaton & Hubbard, 2-180; Lathrop et al., 3-410; Rison v. Knapp, 4-349; Kahley et al., 4-378; Lathrop et al., 5-43; Davis v. Anderson et al., 6-146; Pease et al., 6-173; Lake, 6-542; Zahm v. Fry et al., 9-546; Hovey v. Home Ins. Co., 10-224; Hall v. Scovell, 10-296; Morris v. Schwartz, 10-305.

Railroad. Sweat v. Boston, Hartford & Erie R. R. Co., 5-234; Alabama & Chattanooga R. R. Co., 6-107.

Railway Company. Southern Minnesota R. R. Co., 10-86.

Ratification. Lady Bryan Mining Co., 4-394; Kansas City Stone & Marble Manufacturing Co., 9-76; Cook et al. v. Tullis, 9-433.

Real Estate. Edward, 2-349.

Reasonable Cause. Wilson v. Brinkman et al., 2-468; Kingsbury et al., 3-318;

Terry & Cleaver, 4-126; Stranahan v. Gregory & Co., 4-427; Kohlsaat v. Hoguet et al., 5-159; Wilson v. City Bank of St. Paul, 5-270; Forsyth & Murtha, 7-174; Warren v. Tenth Nat. Bank, 7-481; Harrison v. McLaren, 10-244.

Receiver. John Sedgwick, assignee, v. Wm. Menck & Chas. B. Bostwick, 1-675; Sedgwick v. Place et al., 3-140. Smith v. Buchanan et al., 4-397; Alden v. The Boston, Hartford & Erie R. R. Co., 5-230; Stuyvesant Bank, 6-272; Platt v. Archer, 6-465; Buchanan et al. v. Smith, 7-513; Republic Ins. Co., 8-197; Sutherland v. Lake Superior Co., 9-298; Keenan v. Shannon, 9-441; Chandler v. Sidle, 10-236; Noonan, 16-380; Miller v. Bowles, Appleton v. Stevens, 10-515.

Reconstruction. Rankin v. Florida R. R. Co., 1-647.

Records. Devoe, 2-27; Alabama & Chattanooga R. R. Co. v. Jones, 7-145.

Recording. Dow, 6-10; Davis v. Anderson et al., 6-146.

Rebellion. Whittaker, 4-160; Wm. H. Holleman v. Chas. Dewey, 7-269.

Recovery by Assignee. Massey et al. v. Allen, 7-401; Hubbard v. Allaire Works, 4-628; Gantzinger v. Ribble, 4-724.

Recovery of Property. Sedgwick v. Millward, 5-347; Traders' Nat. Bank v. Campbell, 6-353; Johnson v. Bishop, 8-533.

Reference. John Bellamy, 1-113; Batchelder, 3-150; Smith v. Buchanan et al., 4-397; Hymes, 10-433.

Register. Jesse H. Robinson, 1-8; Jas. Macintire, 1-11; Mortimer C. Cogswell, 1-62; Augustus C. Bliss, 1-78; Freeman Orme, 1-80; John Bellamy, 1-96, 113; Isidor Lyon, 1-111; Charles G. Patterson, 1-147; Isaac Clark, 1-188; Isaac Rosenfield, Jr., 1-319; Edward S. Stokes, 1-489; Jacob A. Koch, 1-549; Henry Gettleson, 2-604; Puffer, 2-43; Dean et al., 2-89; Lanier, 2-154; Brandt, 2-215; Adams, 2-273; Lane, 2-309; Pulver, 2-313; Boggart & Evans, 2-435; McIntosh, 2-506; Loder Bros., 2-517; Pegues, 3-80; Noble, 3-97; Stevens, 4-367; Clark & Biningier, 6-204; Pioneer Paper Co., 7-250; Jaycox & Green, 7-303; Reikert, 7-329; Bartush, 9-478.

Regularity of Proceedings. John Bellamy, 1-96.



Rehearing. Troy Woolen Company, 6-16.

Relative of Bankrupt. Zinn et al., 4-436.

Relation Back of Assignment. Mays v. Man'f. Bank, 4-660.

Remedy. Jordan, 8-180; Sheehan, 8-345; Dinger v. Becker, 9-508.

Remedy at Law. Post v. Corbin, 5-12; Garrison v. Markley, 7-246; Cook v. Waters, 9-155.

Removal. Edward S. Stokes, 1-489.

Rent. Fred. B. Walton et al., 1-557; Benjamin Appold, 1-621; Brock v. Terrell, 2-643; Merrifield, 3-98; Walker v. Barton, 3-265; Joslyn et al., 3-473; Charles H. Wynne, 4-23; Laurie, Blood & Hammond, 4-32; Purcell et al. v. Wagner et al., 5-23; McGrath & Hunt, 5-254; Merchants' Ins. Co., 6-43; Webb & Co., 6-302; Butler, 6-501; Ten Eyck & Choate, 7-26; Longstreth, assig., v. Pennock et al., 7-449; Austin v. O'Rielly, assignee, 8-129; May & Merwin, 9-419; Dyke & Marr, 9-430; Hotchkiss, 9-488; John Clancy, 10-215; Hall v. Scovill, 10-296.

Recision. Pusey, 6-40.

Residence. Jas. T. Ray, 1-203; Francis T. Prankard & Wm. Prankard, 1-297; Wm. H. Magie, 1-522; Wm. K. Belcher, 1-666; Haley, 2-36; Straus, 2-48; Little, 2-294; Kyler, 2-650; Burke, 3-296; Leighton, 5-95.

Restraining Suits. Donaldson, 1-181; Camp, 1-242; Foster et al. v. Ames, et al., 2-455.

Return of Goods. Pusey, 6-40; Ulrich et al., 8-15; Citizens' Savings Bank, 9-152; Reeser v. Johnson, 10-467.

Review. Thornhill & Williams v. Bank of Louisiana, 5-367; Dow, 6-10; Curran et al. v. Munger et al., 6-33; Sampson v. Blake et al., 6-401; Same, 6-410; Casey, 8-72.

Rules. Kennedy & McIntosh, 7-337.

Release. Bieler 7-552.

Sacrifice of Property. Donaldson, 1-181.

Sale. George E. White & John E. May, 1-218; R. H. Barrow & Co., 1-481; Ellis, 1-555; Dean et al., 2-89; Foster et al. v. Ames et al., 2-455; Columbian Metal Works, 3-75; Lee v. Franklin Avenue Savings Institution et al., 3-218; White

v. Rafferty, 3-221; Mebane, 3-347; Babbitt v. Walbrun, 4-121; Valliquette, 4-307; Adams v. Boston, Hartford & Erie R. R. Co., 4-314; Fox v. Eckstein, 4-373; Hitchings, 4-384; Keefer, 4-389; Troy Woolen Company, 4-629; Hanna, 5-292; Knight v. Cheney, 5-305; Brinckman, 6-541; Pusey, 7-45; Ellerhorst et al., 7-49; Sedgwick v. Lynch, 8-289; Dillard, 9-8; G. B. Grinnell & Co., 9-29; Pratt, 9-47; Weaver, 9-132; Lockett v. Hoge, 9-167.

Sale of Encumbered Property. Edward Bigelow et al., 1-632; National Iron Company, 8-422; Sutherland et al v. Lake Superior Ship Canal Railroad and Iron Co., 9-299.

Salaries. Pierson, 10-107.

Savings Bank. Sixpenny Savings Bank v. Estate of Stuyvesant Bank, 10-399.

Schedules. Charles A. Morford, 1-211; Robert Ratcliffe, 1-400; Needham, 2-387; Watts, 2-447; Beal, 2-587; Burper et al. v. Sparhawk, 4-685; Heller, 5-46; Simonds v. Barnes, 6-377.

Secession. Rankin & Pullain et al. v. Florida Railroad Company et al., 1-647.

Secured Creditor. Davis & Son, 1-120; Donaldson, 1-181; Taylor R. Stewart, 1-278; Sampson D. Bridgman, 1-312; Henry C. Bolton, 1-370; Dunham & Orr, 2-17; Bigelow & Kellogg, 2-371; Avery v. Johann, 3-144; Lee v. Franklin Avenue German Savings Institution et al., 3-218; Jervis V. Smith, 3-594; Snedaker, 3-629; Howard, Cole & Co., 4-571; Clark & Biningier, 5-255; Davis v. Anderson et al., 6-146; Stansell, 6-183; Noonan & Co., 6-579; Haake 7-61; G. B. Grinnell & Co., 9-29; Newland, 9-62; McConnell, 9-387; Morrison, 10-105.

Securing Debts. C. D. Tuttle v. D. W. Truax, 1-601.

Security. Nathaniel O. Cram; 1-504; Edward Bigelow et al., 1-632; Ruehle, 2-577; Lee v. Franklin Avenue German Savings Institution et al., 3-218; Graham, v. Stark et al., 3-357; Ungewitter v. Von Sachs, 3-723.

Darby Trustees v. Boatman's Savings Institution, 4-601; Potter et al. v Coggeshall, 4-73; W. B. & J. F. Alexander, 4-178; Bank of India v. Evans et al., 4-186;



Sawyer et al. v. Turpin et al., 5-339; Hood et al. v. Karper et al., 5-358; Hartell, 7-559; Smith v. Kehr et al., 7-97; Ames, McKay & Aldus, 7-230; Jaycox & Green, 7-303; Newland, 7-477; Granger & Sabin, 8-30; Jaycox & Green, 8-241; Newland, 9-62; Smith v. Little, 9-111; Weaver, 9-132.

Separate Creditor. Isaacs & Cohn, 6-93.

Separate Debts. Holland, 8-190.

Servants' Wages. Rosenfeld, Jr., 2-117; Brown, 3-250.

Service of Papers. Gordon McMillan & Co. v. Scott & Allen, 2-86; Van Tuyl, 2-579; Alabama & Chattanooga R. R. Co. v. Jones, 5-98; Stuart v. Hines et al., 6-416; Hyslop v., Haddock et al., 6-552.

Set off. Catlin, assignee, v. Foster, 3-540; Jones v. Kinney et al., 4-649; Hitchcock v. Rollo, assignee, &c., 4-690; City Bank of Savings, Loan and Discount, 6-71; Petrie et al., 7-332; Scammon v. Kimball, assignee, 8-337; Troy Woolen Co., 8-412; Sawyer et al. v. Hoag et al., 9-145; Gray v. Rollo, 9-337; Hovey et al. v. Home Insurance Co., 10-224.

Setting aside Deed. Smith v. Kehr et al., 7-97.

Setting aside Default. Alonzo Murphy, 10-48.

Setting aside Discharge. Burper v. Sparhawk, 4-685.

Setting aside Judgment. Humble & Co. v. Carson, 6-84.

Setting aside Sale. Lenihan v. Haman et al., 8-557.

Settlement. Smith v. Kehr et al., 7-97.

Settlement Upon Wife. John Sedgwick v. James K. Place et al., 10-28; Edward C. Kehr, Clara Meyer & Nicholas Schaffer v. John Ford Smith & Vogeler, 10-49.

Sheriff. Henry Bernstein, 1-199; Fortune, 2-662; Beall v. Harrell et al., 7-400; Miller v. O'Brien, 9-26; Grinnell & Co., 9-29; Mills et al. v. Davies et al., 10-340; Allen & Co. v. Montgomery et al., 10-504.

Six Months. Pratt, Jr., v. Curtis et al., 6-139; Rooney, 6-163.

Slaves. Buckner v. Street, 7-255.

Specification. William D. Hill, 1-16, 275; Robert C. Rathbone, 1-294; Robert

C. Rathbone, 1-324; Darius Tallman, 1-540; Bashford, 2-73; Stokes, 2-212; Eidom, 3-106; Cretiew, 5-423.

Spiruous Liquors. Paddock, 6-132.

Stamp Duties. Myrick, 3-156.

State Court. Louis Glaser, 1-336; Hafer & Bro., 1-586; Pettus, 2-44; Rundle & Jones, 2-113; Hill, 2-140; Rosenberg, 2-236; Bridgman, 2-252; Migel, 2-481; Hussman, 2-438; Kerosene Oil Co., 2-529; Thornhill, et al. v. Bank of Louisiana, 3-435; Bininger et al., 3-481; Clark & Bininger, 3-491; Meakins et al. v. Creditors, 3-511; Clark v. Bininger, 3-518; Sampson v. Burton et al., 4-2; McKinsey & Brown v. Harding, 4-39; Fuller, 4-116; Maxwell v. Faxton et al., 4-210; Corey et al. v. Ripley, 4-503; Markson & Spaulding v. Heaney, 4-511; Alden v. Boston, Hartford & Erie Railroad Company, 5-230; Piper v. Harmer, 5-252; Sampson v. Burton et al., 5-459; Mallory, 6-22; Independent Insurance Company, 6-169; Central Bank, 6-207; Lady Bryan Co., 6-252; Horter et al. v. Harlam, 7-238; Bingham v. Claflin, et al., 7-412; Gilbert v. Priest, 8-159; Daggett, 8-433; Lenihan v. Haman et al., 8-557; Batchelder v. Low, 8-571; Alston v. Robinett, 9-74; Penny v. Taylor, 10-201; Mosselman & Polaert v. Caen, 10-513; Miller v. Bowles et al., 10-515; Woolfolk et al. v. Gunn, 10-526; Woolfolk v. Murray, Bryan v. Simms, 10-540.

Statute of Limitation. James T. Ray, 1-203; H. P. Harden, 1-395; Martin v. Smith et al., 4-275; Sedgwick v. Casey, 4-497. Hunt et al. v. Taylor, 4-683; Krogman, 5-116; Piper v. Harmer, 5-252; Cornwall, 6-305; Cogdell v. Exum, 10-327.

Stay of Proceedings. Benjamin F. Metcalf & Samuel Duncan, 1-201; Louis Meyers, 1-581; Hill, 2-140; Minon v. Van Nostrand et al., 4-108; Hoyt et al. v. Freel et al., 4-132; Ghirardelli, 4-164; Markson & Spaulding v. Heany, 4-511; Haskell & Co. v. Ingalls, 5-205; Thornhill et al. & Williams v. Bank of Louisiana, 5-367; Sampson v. Clark & Burton, 6-403; Allen v. Soldiers' Dispatch Co., 4-537.

Stipulation. Bieler, 7-552.

Stock. Valliquette, 4-307; Winter v. Iowa & North Pacific Railroad Company, 7-289; Grinnell, 9-137.

Stock, Assessments on. Meyers v. Seeley et al., 10-411.

Stock Board. Hyde v. Woods et al., 10-54.

Stockbrokers' Membership. Hyde v. Wood, 10-54; Allen v. Ward, 10-285.

Stock Subscription. Chandler v. Sidle, 10-236.

Stockholder. Edward Bigelow, 1-667; Allen v. Bus. & Dispatch Co., 4-537; Lady Bryan Co., 4-394; Upton v. Burnham, 8-221; Scammon v. Kimball, 8-337; Sawyer et al. v. Hoag et al., 9-145; Chandler v. Sidle, 10-236; Allen v. Ward, 10-385; Sixpenny Savings Bank v. The Estate of Stuyvesant Bank, 10-399.

Storage. Benjamin F. Appold, 1-621.

Subpœna. Gordon, McMillan & Co. v. Scott & Allen, 2-86; Jobbins v. Montague et al., 6-117; Hyslop, assignee, v. Hoppock et al., 6-552, 6-557.

Subsequent Earning. Mays v. Manufacturing Bank Note Company, 4-660.

Subsequent Security. Vogel v. Lathrop, 4-439.

Substitution. Cook et al. v. Tullis, 9-433.

Suffering Property to be taken. Rankin v. Florida Railroad Company, 1-647; Belden, 2-42; Beattie v. Gardner et al., 4-323; Smith v. Buchanan et al., 4-397; Wright v. Filley, 4-611; Kohlsaat v. Hoguel et al., 5-159; Merchants' Insurance Company, 6-43; Scull, 10-166.

Suits. John S. Wright, 2-142; Goodall v. Tuttle, 7-198; Bingham v. Clafin et al., 7-412; Shearman v. Bingham, 7-490; Jones, 7-506; Gilbert v. priest, 8-159; Payson v. Dietz, 8-193; Allen & Co. v. Montgomery et al., 10-504.

Summary Jurisdiction. Hafer & Bro., 1-586; Marshall v. Knox et al., 8-97; Dole, 9-193.

Summary Proceedings. Chas. E. Beck; 1-588; Irving v. Hughes, 2-62; Josiah D. Hunt, 2-539; Ulrich, 3-133; Bonesteel, 3-517; L. S. Ballou, 3-718; Masterson, 4-553; Knight v. Cheney, 5-305; Smith v. Mason, 6-1; Sampson v. Clarke & Burton, 6-403; Sampson v. Blake et al., 6-410; Marshal v. Knox et al., 8-97.

Summons. John Bellamy, 1-64.

Supervisory Jurisdiction. York v. Hoover, 4-479.

Supplementary Proceedings. Brock v. Hoppock, 2-7.

Supreme Court. Morgan et al. v. Thornhill et al., 5-1; Marshal v. Knox et al., 8-97.

Surety. United States v. Throckmorton, 8-309; United States v. Herron, 9-535.

Surplus Funds. Brisco, 2-226; Haynes, 2-227; Biddle, 9-144.

Surrender of Bankruptcy. Abraham E. Hasbrouck, 1-75; Clark & Daughtrey, 10-21.

Surrender of Preference. Thos. Princeton, 1-618; Montgomery, 8-374; Tonkin & Trewartha, 4-52; Richter's Estate, 4-221; Kipp, 4-593.

Surrender of Property. Bogert & Evans, 2-585; Shafer & Hamilton, 2-586; Montgomery, 8-374; J. J. & C. W. Walton, 4-466; Leland et al., 9-209; Bugbee, 9-258.

Surrender of Security. High & Hubbard, 8-192.

Suspension of Payment. Alfred L. Wells, Jr., 1-171; Walter C. Cowles, 1-280; Wm. Leeds, 1-521; Cone & Morgan, 2-21; Ballard & Parson, 2-250; Doan v. Compton & Doan, 2-607; Randall, 3-18; Thompson & McClellan, 3-185; Hollis Kenny et al., 3-310; Schaffer v. Fitchery & Thomas, 4-548; McLean v. Brown, Weber & Co., 4-585; Massachusetts Brick Co., 5-408; Baldwin v. Wilder, 6-85; Hercules Mutual Life Assurance Society, 6-338; Westcott et al., 7-285; Winter v. North Pacific R. Co., 7-289; Mendenhall v. Carter, 7-320; Raynor, 7-527; Wilson, 8-396; Pratt, 9-47.

Taxes. Brand, 8-324; Stokes v. State of Georgia, 9-191.

Termination of Proceedings. Isaac Seckendorf, 1-626.

Testimony. Isaac Rosenfield, Jr., 1-319; Dunn et al., 9-487.

Time. John Bellamy, 1-64; Darius Tallman, 1-540; Isaac Seckendorf, 1-625; Bodenheimer & Adler, 2-419; Lang, 2-480; Terry & Cleaver, 4-126; Bigler v. Waller, 4-292; York & Hoover, 4-479; Place & Sparkman, 4-541; Schenck, 5-93; Davis v. Anderson, et al., 6-146; Hennocksburg & Block, 7-37;

Haake, 7-61; Thornhill & Co. v. Link, 8-521; M. A. Parish, 9-573.

Title. Bolander v. Gentry, 2-656; Smith v. Buchanan et al., 4-397; Carow, 4-544; Zantzinger v. Ribble, 4-724; Warren & Charles Leland, 5-222; Sawyer et al. v. Turpin et al., 5-389; Davis v. Anderson et al., 6-146; Rogers v. Winsor, 6-246; Lyon, 7-182; King, 8-285; Purviance v. Union Nat. Bank, 8-447; Harrell v. Beall, 9-49; Wood Mowing & Reaping Machine Co. v. Brooks, 9-395; Zahm v. Fry et al., 9-546; Fourth Nat. Bank v. City Bank, 10-44; Hall v. Scovil, 10-295; Sutherland v. Davis, 10-424; Meeks v. Whatley, 10-498.

Torts. Crocket et al., 2-208; Hennocksburg & Block, 7-37.

Transfer. Owen Byrne, 1-464; Dunham & Orr, 2-17; Freeman, 4-64; Starkweather v. Cleveland Ins. Co., 4-341; Second Nat. Bank of Leavenworth v. Hunt, 4-516; Wood, 5-421; Rooney, 5-163; Withrow v. Fowler, 7-389; Massey v. Allen, 7-401; Munn, 7-468; Mitchell v. McKibbin, 8-548; Catlin v. Hoffman, 9-342.

Trader. O'Bannon, 2-15; White, 2-590.

Trover. Foster v. Hackley & Sons, 2-406; Mitchell v. McKibbin, 8-548.

Trust. O'Neale, 6-425; Jaycox & Green, 8-241.

Trust Deed. Kansas City Stone & Marble Manuf. Co., 9-76.

Trustee. March v. Heaton & Hubbard, 2-180; Kimball, 2-204; Bidwell, 2-229; Stillwell, 2-526; Lady Bryan Mining Co., 4-144; Darby, 4-309; Zinn et al., 4-486; Stuyvesant Bank, 6-272; Talcott in re Souther, 9-502.

Trust Fund. Louis Meyers, 1-581; Hosie, 7-601; Scammon v. Kimball, 8-337; King, 9-140; Tesson et al., 9-378; Cook et al. v. Tullis, 9-438.

Ultra Vires. Tiffany v. Boatman's Savings Inst., 9-245.

Uncontested Cases. John Bellamy, 1-64; Wylie, 2-137.

Uniformity of Act. Appold, 1-621; Beckerkord, 4-203; Jordan, 8-180; Deckert, 10-1.

Unliquidated Damages. Freeman Orne, 1-57; Clough, 2-151.

Unmatured Obligations. Linn et al. v. Smith, 4-47; W. B. & J. F. Alexander, 4-178.

Unreasonable Delay. Belden, 6-443.

Usury. Fuller, 4-116; Brombey v. Smith et al., 5-152; Tiffany v. Boatman's Saving Inst., 9-245.

Validity Proceedings. Fallon, 2-277.

Verdict. De Forest, 9-278.

Verification. Andw. J. Walker, 1-335; Lamer, 2-154; Solis, 4-68; Moore & Bro. v. Harley, 4-242; Findlay, 9-83; Fendley, 10-251; Simmons, 10-254.

Violation, Constitutional Compact. Russell v. Thomas, 10-14.

Voluntary Bankruptcy. Ernest Hussman, 2-438.

Voluntary Conveyance. Beecher v. Clark, 10-885.

Vote. Stillwell, 7-226; Lake Superior Ship Canal R. R. Iron Co., 7-376; J. & M. Pfomm, 8-357; M. A. Parrish, 9-573.

Wager. Chandler, 9-514.

Wages. Harthorn, 4-108; Kenyon & Fenton, 6-238.

Waiver. Charles G. Patterson, 1-101; Friedenburt, 1-268; Alex. T. Stewart v. Siegfried Isidor et al., 1-485; Louis Meyers, 1-581; Bloss, 4-147; Kahley et al., 4-378; Wilson v. Capuro et al., 4-714; Skelley, 5-214; Noonan & Co., 6-579; McNaughton, 8-44; Mitchell, 8-47; Upton v. Bunham, 8-221; Joseph Solomon, 10-9.

Want of Notice. Bush, 6-179.

War. Rankin & Pullain et al. v. Florida R. R. Company, 1-647; Bigler v. Waller, 4-291.

Warrant of Attorney. John Pulver, 1-47; Wm. Leeds, 1-521; Phelps, Caldwell & Co., 1-525; Powell, 2-45; Barret, 2-583; Dibblee et al., 2-617; Creditors v. Williams, 4-580; Hood et al. v. Kurper et al., 5-358; Litchfield, 9-506; Christley, 10-268.

Warrant to Marshal. F. & A. Speyer, 6-255.

Widow. Hester, 5-285.

Wife. Jones et al., 9-556.

Wife of Bankrupt. Wm. Griffin, 1-371; Van Buren Cobb, 1-414; Louis Meyers, 1-581; Pomeroy, 2-14; Andrew P. Van Tuyl, 2-70; Rathbone, 2-261; Bigelow et al., 2-556; Blandin, 5-39; Smith v. Kehrs et al., 7-97.

Wife. Settlement on. Sedgwick v. Place et al., 5-168.

Withdrawal of Papers. Jas. M. Lowery, 1-74; McNair, 2-219; Clark & Bininger, 5-255.

Witness. Sam'l W. Levy & Mark Levy, 1-109; Geo. W. Kimball, 1-193; And'w. P. Van Tuyl, 2-70; G. P. & B. W. Fay, 3-660; Pioneer Paper Co., 7-250; Stuyvesant Bank, 7-445.

# GENERAL ORDERS IN BANKRUPTCY.

ADOPTED APRIL 12, 1875.

## SUPREME COURT OF THE UNITED STATES.

October Term, 1874.

### **Recital of Authority.**

It is hereby ordered by the Chief-Justice and Associate Justices of the Supreme Court of the United States, in pursuance of the powers conferred upon them by the several acts of Congress in that behalf, that the general orders in bankruptcy heretofore established by the court be, and they are hereby, amended so as to read as follows.

#### **I.**

##### **Duties of Clerks of District Courts.**

###### *Filing Papers.*

The clerks of the several District Courts shall enter upon each petition in bankruptcy the day, and the hour of the day, upon which the same shall be filed; and shall also make a similar note upon every subsequent paper filed with them, except such papers as have been filed before the Register, and so indorsed by him; and the papers in each case shall be kept in a file by themselves.

###### *Withdrawal Papers.*

No paper shall be taken from the files for any purpose except by order of the court.

###### *Indorsement.*

Every paper shall have indorsed upon it a brief statement of its character.

###### *Dockets.*

The clerks shall keep a docket, in which the cases shall be entered and numbered in the order in which they are commenced;

and the number of each case shall be indorsed on every paper.

The docket shall be so arranged that a brief memorandum of every proceeding in each case shall be entered therein, in a manner convenient for reference, and shall at all times be open for public inspection.

The clerks shall also keep separate minute-books for the record of proceedings in bankruptcy, in which shall be entered a minute of all the proceedings in each case, either of the court or of a register of the court, under their respective dates.

#### **II.**

##### **Process.**

###### *How Issued.*

All process, summons, and subpoenas shall issue out of the court under the seal thereof, and be tested by the clerk.

###### *Blanks.*

And blanks, with the signature of the clerk and seal of the court, may, upon application, be furnished to the Registers.

#### **III.**

##### **Appearance.**

###### *In Person.*

Proceedings in bankruptcy may be conducted by the bankrupt in person in his own behalf, or by a petitioning or opposing creditor; but a creditor will only be allowed to manage before the court his individual interest.

*By Attorney.*

Either party may appear and conduct the proceedings by attorney, who shall be an attorney or counselor authorized to practice in the Circuit or District Court.

*Indorsement.*

The name of the attorney or counselor, with his place of residence and business, shall be entered upon the docket, with the date of the entry.

*Recitals in Order.*

All papers or proceedings offered by an attorney to be filed shall be indorsed as above required ;

And orders granted on motion shall contain the name of the party or attorney making the motion.

*Service on Attorney.*

Notices and orders which are not, by the act or by these rules, required to be served on the party personally, may be served upon his attorney.

## IV.

**Commencement of Proceedings.***Reference to Register.*

Upon the filing of a petition in case of voluntary bankruptcy, or as soon as any adjudication of bankruptcy is made upon a petition filed in case of involuntary bankruptcy, the petition shall be referred to one of the Registers in such manner as the District Court shall direct.

*Copies of Papers.*

And the petitioner shall furnish the Register with a copy of the papers in the case.

*Further Proceedings.*

And thereafter all the proceedings required by the act shall be had before him, except such as are required by the act to be had in the District Court, or by special order of the district judge, unless some other Register is directed to act in the case.

*Protection and Control of Bankrupt.*

The order designating the Register to act upon any petition shall name a day upon which the bankrupt shall attend before the Register, from which date he shall

be subject to the orders of the court in all matters relating to his bankruptcy, and may receive from the Register a protection against arrest, to continue until the final adjudication on his application for a discharge, unless suspended or vacated by order of the court.

*Copy Order Reference.*

A copy of the order shall forthwith be sent by mail to the register, or be delivered to him personally, by the clerk or other officer of the court.

## V.

**Registers.***Duties and Powers of.*

The time when and the place where the registers shall act upon the matters arising under the several cases referred to them, shall be fixed by special order of the district court, or by the register acting under the authority of a general order, in each case, made by the district court ; and at such times and places the registers may perform the acts which they are empowered to do by the act, and conduct proceedings in relation to the following matters, when uncontested, viz :

Making adjudication of bankruptcy on petition of the debtor ;

Administering oaths ;

Receiving the surrender of a bankrupt ;

Granting protection thereon ;

Giving requisite direction for notices, advertisements, and other ministerial proceedings ;

Taking proofs of claims ;

Ordering payment of rates and taxes, and salary or wages of persons in the employment of the assignee ;

Ordering amendments, or inspection, or copies, or extracts of any proceedings ;

Taking accounts of proceeds of securities held by any creditor ;

Taking evidence concerning expenses and charges against the bankrupt's estate ;

Auditing and passing accounts of assignees ;

Proceedings for the declaration and payment of dividends, and taxing costs in any of the proceedings ;

And generally dispatching all administrative business of the court in matters of



bankruptcy, and making all requisite uncontested orders and directions therein, which are not, by the acts of Congress concerning bankruptcy, specifically required to be made, done, or performed by the district court itself ;

*Review by Court.*

All of which shall be subject to the control and review of the said court :

*Surrender of Bankrupt—Definition.*

*Provided, however,* That by the surrender of a bankrupt mentioned and referred to in this order and in the act in that behalf, is intended and understood a personal submission of the bankrupt himself for full examination and disclosure in reference to his property and affairs, and not a surrender or delivery of the possession of his property.

VI.

**Dispatch of Business.**

*Adjournment.*

Every register, in performing the duties required of him under the act, and by these orders, or by order of the district court, shall use all reasonable dispatch, and shall not adjourn the business but for good cause shown.

*Length of Day's Session.*

Six hours' session shall constitute a day's sitting if the business requires ; and when there is time to complete the proceedings in progress within the day.

*Cost.*

The party obtaining any adjournment or postponement thereof may be charged, if the court or a register think proper, with all the costs incurred in consequence of the delay.

VII.

**Examination and Filing of Papers.**

*Examination of Petition.*

It shall be the duty of the register to examine the bankrupt's petition and schedules filed therewith, and to certify whether the same are correct in form ; or, if deficient, in what respect they are so.

*Amendment.*

And the court may allow amendments to be made in the petition and schedules

upon the application of the petitioner, upon proper cause shown, at any time prior to the discharge of the bankrupt.

*Filing with Register.*

The register shall indorse upon each paper filed with him the time of filing, and, at the close of the last examination of the bankrupt, the register having charge of the case shall file all the papers relating thereto in the office of the clerk of the district court.

*Record of Case.*

And these papers, together with those on file in the clerk's office, and the entries in the minute-book, shall constitute the record in each case ; and the clerk shall cause the papers in each case to be bound together.

VIII.

**Orders by the Register.**

*In Uncontested Cases—Recitals.*

Whenever an order is made by a register in any proceeding in which notice is required to be given to either party before the order can be made, the fact that the notice was given, and the substance of the evidence of the manner in which it was given, shall be recited in the preamble to the order, and the fact also stated that no adverse interest was represented at the time and place appointed for the hearing of the matter upon such notice.

*In Contested Cases.*

And whenever an order is made where adverse interests are represented before the Register, the fact shall be stated that the opposing parties consented thereto, or that the adverse interest represented made no opposition to the granting of such order.

*Waiving Opposition.*

*Provided, however,* if any party interested adversely to such order shall not, before the hearing of the application therefor, give reasonable notice in writing to the Register that he intends to contest the same, and objects to its being heard by the Register, the same shall be heard by the Register as by consent.

*Review by Court.*

But all such orders may be reviewed by the District Court at the request of any party aggrieved, upon his paying the cost of certifying the matter to said court within ten days from the making of the order;

Which request and payment shall be entered by the Register on his docket;

And he shall thereupon forthwith certify the said matter to the court, and said court, upon making its decision, may make such order with regard to the costs as justice shall require.

**IX.****Notification to Assignee of his Appointment.***Mode of Service and Contents.*

It shall be the duty of the Register, immediately upon the appointment of an assignee, as prescribed in Sections 12 and 13\* of the act (should he not be present at such meeting), to notify him, by personal or mail service, of his appointment;

And in such notification the assignee so appointed shall be required to give notice forthwith to the Register of his acceptance or rejection of the trust.

*No Official or General Assignee.*

No official assignee shall be appointed by the court or judge;

Nor any general assignee to act in any class of cases.

*Additional Assignee.*

No additional assignee shall be appointed by the court or judge under Section 13† of the act, except upon petition of one-fourth in number and value of the creditors who have proved their debts, and upon good and sufficient cause shown.

**X.****Testimony, How Taken.***Manner of Conducting.*

The examination of witnesses before a Register in bankruptcy may be conducted by the party in person or by his counsel or attorney, and the witnesses shall be subject to examination and cross-examination, which shall be had in conformity with the mode now adopted in the courts of law.

*How Taken Down.*

The depositions upon such examination shall be taken down in writing by or under the direction of the Register, in the form of a narrative, unless he determines that the examination shall be by question and answer in special instances, and when completed shall be read over to the witness and signed by him in the presence of the Register.

*Irrelevant and Immaterial Testimony.**Noting Objections.*

Any question or questions which may be objected to shall be noted by the Register upon the deposition, but he shall not have power to decide on the competency, materiality, or relevancy of the question; and the court shall have power to deal with the costs of incompetent, immaterial, or irrelevant depositions, or parts of them, as may be just. In case of a refusal of a witness to attend, or to testify before a Register, the same proceedings may be had as are now authorized with respect to witnesses to be produced on examination before an examiner of any of the courts of the United States on written interrogatories.

**XI.****Minutes before Register, Filing, etc.***Minutes.*

A memorandum made of each act performed by a Register shall be in suitable form to be entered upon the minute-book of the court, and shall be forwarded to the clerk of the court not later than by mail the next day after the act has been performed.

*Issue of Law or Fact.*

Whenever an issue is raised before the Register in any proceedings, either of fact or law, he shall cause the same to be stated in writing in the manner required by the 4th and 6th‡ Sections of the act, and certify the same forthwith to the district judge for his decision.

The pendency of the issue undecided before a judge shall not necessarily suspend or delay other proceedings before the Register or court in the case.

\* §§ 5083, 5084, R. S.

† § 5084, R. S.

‡ §§ 5009, 5010, R. S.

## XII.

**Accounts for Services of Register and Marshal.***To Keep Account Travelling and Incidental Expenses.*

Every register shall keep an accurate account of his travelling and incidental expenses, and those of any clerk or other officer attending him in the performance of his duties in any case or number of cases which may be referred to him.

*Make Returns Each Month.*

And shall make return of the same under oath, with proper vouchers, (when vouchers can be procured,) on the first Tuesday in each month.

*Marshal's Return Necessary Expenses.*

And the marshal shall make his return, under oath, of his actual and necessary expenses in the service of every warrant addressed to him, and for custody of property, publication of notices, and other services, and other actual and necessary expenses paid by him.

*Vouchers and Statement.*

With vouchers therefor whenever practicable,

And also with a statement that the amounts charged by him are just and reasonable.

## XIII.

**Surrender of Property—Marshal as Messenger.***Delivery of Property to Assignee by Bankrupt.*

In cases of voluntary bankruptcy, the bankrupt, after being decreed such, and after the appointment of an assignee or trustee, and assignment duly made, shall, unless the court otherwise direct, deliver possession of all his property and assets (including evidences of debt and books of account) to said assignee or trustee.

*Court May Order Seizure Pending Choice of Assignee.*

Unless at or after such decree and before said assignment the court, on application of any creditor or creditors, and upon good cause shown by affidavit, shall deem it necessary for the interest of the credit-

ors that possession of such property and assets should be sooner delivered up; in which case, as in cases of involuntary bankruptcy, the court may order said property and assets to be taken possession of by the marshal as messenger.

*Marshal to Take and Deliver Property to Assignee.*

Directions for which may be inserted, in pursuance of such order, in the original warrant in bankruptcy, or in a special warrant to be issued for that purpose.

It shall be the duty of the marshal as messenger to take possession of the property of the bankrupt, when required thereto by warrant or order of the court, and to deliver the same to the assignee or trustee when appointed and assignment made as aforesaid.

*Marshal to Make and Deliver Inventory to Assignee.*

The marshal, when taking possession as aforesaid, shall make an inventory of the property and assets by him received, and deliver the same, with the said property and assets, to said assignee or trustee, who shall verify the same, and if found correct and full no further inventory shall be required.

*Claim by Stranger.*

*Provided, however,* That if any goods or effects so taken into possession as the property of the bankrupt shall be claimed by or in behalf of any other person.

*Giving Notice of Claim.*

The marshal shall forthwith notify the petitioning creditor, or assignee, if one be appointed, of such claim.

*Delivery to Claimant unless Indemnified.*

And may, within five days after so giving notice of such claim, deliver them to the claimant or his agent, unless the petitioning creditor or party at whose instance possession is taken shall, by bond with sufficient sureties, to be approved by the marshal, indemnify the marshal

For the taking and detention of such goods and effects,

And the expenses of defending against all claims thereto.

*If Indemnified to Retain Possession.*

And, in case of such indemnity, the marshal shall retain possession of such goods and effects, and proceed in relation thereto as if no such claim had been made.

*Indemnify for Taking Property not in Possession.*

And provided further, that in case the petitioning creditor claims that any property not in the possession of the bankrupt belongs to him, and should be taken by the marshal, the marshal shall not be bound to take possession of the same, unless indemnified in like manner.

*Preparing Schedules in Absence of Bankrupt.*

He shall also, in case the bankrupt is absent or cannot be found, prepare a schedule of the names and residences of his creditors, and the amount due to each, from the books or other papers of the bankrupt that may be seized by him under his warrant, and from any other sources of information.

*Verification Statements from which Schedule Prepared.*

But all statements upon which his return shall be made shall be in writing, and sworn to by the parties making them, before one of the registers in bankruptcy of the court, or a commissioner of the courts of the United States.

*Special Deputies as Messengers.*

In case of voluntary bankruptcy, the marshal may appoint special deputies to act, as he may designate, in one or more cases, as messengers, for the purpose of causing the notices to be published and served as required in the 11th \* Section of the act, and for no other purpose.

*Contents of Notice of First Meeting.*

In giving the notices required by the third sub-division of the 11th † Section of the act, it shall be sufficient to give the names, residences, and the amount of the debts (in figures) due the several creditors, so far as known, and no more.

## XIV.

**Petitions and Amendments.***Mechanical Preparation of Petitions and Schedules.*

All petitions, and the schedules filed therewith, shall be printed or written out plainly, and without abbreviation or interlineation, except where such abbreviation and interlineation may be for the purpose of reference.

*Of Amendments*

And whenever any amendments are allowed, they shall be written and signed by the petitioner on a separate paper, in the same manner as the original schedules were signed and verified.

*Amendments to different Schedules.*

And if the amendments are made to different schedules, the amendments to each schedule shall be made separately, with proper reference to the schedule proposed to be amended.

*Verification of Amendments.*

And each amendment shall be verified by the oath of the petitioner in the same manner as the original schedules.

## XV.

**Priority of Actions (Involuntary Bankruptcy).***When the Acts alleged are at different times.*

Whenever two or more petitions shall be filed by creditors against a common debtor, alleging separate acts of bankruptcy committed by said debtor on different days within six months prior to the filing of said petitions, and the debtor shall appear and show cause against an adjudication of bankruptcy against him on the petitions, that petition shall be first heard and tried which alleges the commission of the earliest acts of bankruptcy.

*When at the same time.*

And in case the several acts of bankruptcy are alleged in the different petitions, to have been committed on the same day, the court before which the same are pend-

\* §§ 5019, 5032, R. S.

† § 5032, R. S. ; § 5, act 1874.

ing may order them to be consolidated, and proceed to a hearing as upon one petition.

*When one Adjudication is had.*

And if an adjudication of bankruptcy be made upon either petition, or for the commission of a single act of bankruptcy, it shall not be necessary to proceed to a hearing upon the remaining petitions.

*When Debtor seeks to Vacate Adjudication.*

Unless proceedings be taken by the debtor for the purpose of causing such adjudication to be annulled or vacated.

**XVI.**

**Filing Petitions in different Districts.**

*Against same Individual.*

In case two or more petitions shall be filed against the same individual in different districts, the first hearing shall be had in the district in which the debtor has his domicile.

*Amendment to Charge earlier Act.*

And such petition may be amended by inserting an allegation of an act of bankruptcy committed at an earlier date than that first alleged, if such earlier act is charged in either of the other petitions.

*Against same Firm.*

And in case of two or more petitions against the same firm in different courts, each having jurisdiction over the case, the petition first filed shall be first heard.

*Amendment to Charge earlier Act.*

And may be amended by the insertion of an allegation of an earlier act of bankruptcy than that first alleged, if such earlier act is charged in either of the other petitions, and, in either case.

*Staying Proceedings on other Petitions.*

The proceedings upon the other petitions may be stayed until an adjudication is made upon the petition first heard.

*Effect on Jurisdiction of first Adjudication.*

And the court which makes the first adjudication of bankruptcy shall retain jurisdiction over all proceedings therein until the same shall be closed.

*By different Members same Firm in separate Districts.*

In case two or more petitions for adjudication of bankruptcy shall be filed in different districts by different members of the same copartnership for an adjudication of the bankruptcy of said copartnership, the court in which the petition is first filed having jurisdiction shall take and retain jurisdiction over all proceedings in such bankruptcy until the same shall be closed.

*In the same District.*

And if such petitions shall be filed in the same district, action shall be first had upon the one first filed.

**XVII.**

**Concerning Redemptions of Property and Compounding Claims.**

*Who may file Petition to Redeem.*

Whenever it may be deemed for the benefit of the estate of a bankrupt to redeem and discharge any mortgage or other pledge, or deposit, or lien upon any property, real or personal, or to relieve said property from any conditional contract, and to tender performance of the conditions thereof, or to compound any debts or other claims or securities due or belonging to the estate of the bankrupt, the assignee, or the bankrupt, or any creditor who has proved his debt, may file his petition therefor in the office of the clerk of the District Court.

*Notice of Hearing to be given by Court.*

And thereupon the court shall appoint a suitable time and place for the hearing thereof, notice of which shall be given in some newspaper, to be designated by the court, at least ten days before the hearing.

*Who may Appear and Oppose.*

So that all creditors and other persons interested may appear and show cause, if any they have, why an order should not be passed by the court upon the petition authorizing such act on the part of the assignee.

**XVIII.**

**Proceedings in Case of Copartnerships.**

*Opposition to Adjudication by Copartner.*

In case one or more members of a copartnership refuse to join in a petition to

have the firm declared bankrupt, the parties refusing shall be entitled to resist the prayer of the petition in the same manner as if the petition had been filed by a creditor of the partnership.

*Entitled to Notice of Filing.*

And notice of the filing of the petition shall be given to him in the same manner as provided by law and by these rules in the case of a debtor petitioned against.

*May take any Defence Individual Debtor might.*

And he shall have the right to appear at the time fixed by the court for the hearing of the petition, and to make proof, if he can, that the copartnership is not insolvent, or has not committed an act of bankruptcy, and to take all other defences which any debtor proceeded against is entitled to take by the provisions of the act.

*On Adjudication to Furnish Inventory and Schedules.*

And in case an adjudication of bankruptcy is made upon the petition, such copartner shall be required to furnish to the marshal, as messenger, a schedule of his debts and an inventory of his property, in the same manner as is required by the act in cases of debtors against whom adjudication of bankruptcy shall be made.

**XIX.**

**Duties of Assignees.**

*To make Inventory of Property Received.*

*To Compare with Marshal's Inventory.*

The assignee shall, immediately on entering upon his duties, prepare a complete inventory of all the property of the bankrupt that comes into his possession, except where an inventory is furnished to him by the marshal; in which case, having verified the same, he shall add thereto a certificate that the same is correct, or that the same is correct as modified by a supplemental inventory to be annexed thereto; in which supplemental inventory he shall state any deficiency of assets named in the marshal's inventory, and shall add any property or assets not contained therein.

*Report of Exemptions.*

The assignee shall make report to the court, within twenty days after receiving the deed of assignment, of the articles set off to the bankrupt by him, according to the provisions of the 14th Section \* of the act, with the estimated value of each article.

*Exception by Creditor to Exemptions.*

And any creditor may take exceptions to the determination of the assignee within twenty days after the filing of the report.

*Argument of Exceptions and Certificate to Court.*

The register may require the exceptions to be argued before him, and shall certify them to the court for final determination at the request of either party.

*Sending Substance Assignee's Report to Creditors.*

The substance of each monthly return to the assignee shall be sent by the Register to any creditor who shall request it and pay the fee provided for notices to creditors.

*Removal of Assignee who fails to Report.*

In case the assignee shall neglect to file any report or statement which it is made his duty to file or make by the Bankrupt Act, or any general order in bankruptcy, within five days after the same shall be due, it shall be the duty of the Register to make an order requiring the assignee to show cause before the court, at a time specified in the order, why he should not be removed from office.

*Service of Order.*

The Register shall cause a copy of the order to be served upon the assignee at least seven days before the time fixed for the hearing, and proof of the service thereof to be delivered to the clerk.

*Audit of Assignee Accounts.*

All accounts of assignees are to be referred as of course to the Register for audit, unless otherwise specially ordered by the court.



**XX.****Composition with Creditors (Arbitration).***Contents of Application to Compromise.*

Whenever an assignee shall make application to the court for authority to submit a controversy arising in the settlement of demands against the bankrupt's estate, or of debts due to it, to the determination of arbitrators, or for authority to compound and settle such controversy by agreement with the other party, the subject-matter of the controversy and the reasons why the assignee thinks it proper and most for the interest of the creditors that it should be settled by arbitration or otherwise shall be set forth clearly and distinctly in the application.

*Action of Court.*

And the court, upon examination of the same, may immediately proceed to take testimony and make an order thereon.

Or may direct the assignee to give notice of the application, either by publication or by mail, or both, to the creditors who have proved their claims to appear and show cause, on a day to be named in the order and notice, why the application should not be granted,

And may make such order thereon as may be just and proper.

**XXI.****Disposal of Property by Assignee.***Private Sale.*

Upon application to the court, and for good cause shown, the assignee may be authorized to sell any specified portion of the bankrupt's estate at private sale.

*Account of Price and Purchaser to be Filed.*

In which case he shall keep an accurate account of each article sold, and the price received therefor, and to whom sold;

Which account he shall file with his report at the first meeting of creditors after the sale.

*Franchise of Corporation.*

In making sale of the franchise of a corporation, it may be offered in fractional

parts or in certain numbers of shares corresponding to the number of shares in the bankrupt corporation.

**XXII.****Perishable Property.**

In all cases where goods or other articles come into possession of the messenger or assignee which are perishable, or liable to deterioration in value, the court may, upon application, in its discretion, order the same to be sold, and the proceeds deposited in court.

**XXIII.****Service of Notice.***Removal of Assignee.*

The notice provided by the 18th Section\* of the act shall be served by the marshal or his deputy.

*Choosing Assignee to fill Vacancy.*

And notices to the creditors of the time and place of meeting provided by the section† shall be given through the mail by letter, signed by the clerk of the court.

*Endorsement on Envelopes with Notices.*

Every envelope containing a notice sent by the clerk or messenger shall have printed on it a direction to the postmaster at the place to which it is sent to return the same within ten days, unless called for.

**XXIV.****Opposition to Discharge.***Entering Appearance.*

A creditor opposing the application of a bankrupt for discharge shall enter his appearance in opposition thereto on the day when the creditors are required to show cause.

*Time for Filing Specifications.*

And shall file his specification of the grounds of his opposition, in writing, within ten days thereafter, unless the time shall be enlarged by order of the District Court in the case.

\* § 5069, R. S.

† §§ 5069, 5041, R. S.

*Setting Time for Trial.*

And the court shall thereupon make an order as to the entry of said case for trial on the docket of the District Court, and the time within which the same shall be heard and decided.

**XXV.****Second and Third Meeting of Creditors.***When Bankrupt applies for Discharge.*

Whenever any bankrupt shall apply for his discharge, within three months from the date of his being adjudged a bankrupt, under the provisions of the 29th Section\* of the act, the court may direct that the second and third meetings of creditors of said bankrupt required by the 27th and 28th Sections† of said act shall be had on the day which may be fixed in the order of notice for the creditors to appear and show cause why a discharge should not be granted such bankrupt.

*Notices—How Given.*

And the notices of such meeting shall be sufficient if it be added to the notice to show cause, that the second and third meetings of said creditors shall be had before the Register upon the same day that cause may be shown against the discharge, or upon some previous days or day.

**XXVI.****Appeals.***In Equity—Rules Governing.*

Appeals in equity from the District to the Circuit Court, and from the Circuit to the Supreme Court of the United States, shall be regulated by the rules governing appeals in equity in the courts of the United States.

*By Creditor, for Rejection of Claim.*

Any supposed creditor who takes an appeal to the Circuit Court from the decision of the District Court rejecting his claim, in whole or in part, according to the provisions of the 8th Section of the act.

*Notice of Appeal—Time.*

Shall give notice of his intention to enter the appeal within ten days from the entry of the final decision of the District Court upon his claim.

*Entering Appeal—Ten Days.*

And he shall file his appeal in the clerk's office of the Circuit Court within ten days thereafter.

*Statement of Claim.*

Setting forth a statement in writing of his claim in the manner prescribed by said section.

*Answer of Assignee—Ten Days.*

And the assignee shall plead or answer thereto in like manner within ten days after the statement shall be filled.

*Trial of Issue.*

Every issue thereon shall be made up in the court, and the cause placed upon the docket thereof, and shall be heard and decided in the same manner as other actions at law.

**XXVII.****Imprisoned Debtor.***At Commencement of Proceedings.*

If at the time of preferring his petition the debtor shall be imprisoned, the court, upon his application, may order him to be produced.

*Habeas Corpus ad Testificandum.*

Upon *habeas corpus* by the jailor, or any officer in whose custody he may be, before the Register, for the purpose of testifying in any matter relating to his bankruptcy.

*Discharged, when Committed, after Commencement Proceedings on Claim provable in Bankruptcy.*

And if committed after the filing of his petition upon process in any civil action founded upon a claim provable in bankruptcy, the court may, upon like application, discharge him from such imprisonment.

*Habeas Corpus if Imprisoned in Civil Action.*

If the petitioner, during the pendency of the proceedings in bankruptcy, be ar-

\* § 5108, R. S.

† §§ 5092, 5093, R. S.

rested or imprisoned upon process in any civil action, the District Court, upon his application, may issue a writ of *habeas corpus* to bring him before the court, to ascertain whether such process has been issued for the collection of any claim provable in bankruptcy, and, if so provable, he shall be discharged; if not, he shall be remanded to the custody in which he may lawfully be.

*Notice to Creditor.*

Before granting the order for discharge, the court shall cause notice to be served upon the creditor, or his attorney, so as to give him an opportunity of appearing and being heard before the granting of the order.

**XXVIII.**

**Deposit and Payment of Moneys.**

*Designation of Depositories.*

The District Court in each district shall designate certain national banks, if there are any within the judicial district, or if there are none, then some other safe depository, in which all moneys received by assignees or paid into court in the course of any proceedings in bankruptcy shall be deposited.

*Assignee and Clerk's Duty to Deposit.*

And every assignee and the clerk of said court shall deposit all sums received by them, severally, on account of any bankrupt's estate, in one designated depository.

*Monthly Report of Deposit by Clerk.*

And every clerk shall make a report to the court of the funds received by him, and of deposits made by him, on the first Monday of every month.

*Monthly Report of Deposits and Payments by Assignee.*

On the first day of each month the assignee shall file a report with the Register, stating whether any collections, deposits, or payments, have been made by him during the preceding month, and if any, he shall state the gross amount of each.

*Recording Report by Register.*

The Register shall enter such reports upon a book to be kept by him for that purpose, in which a separate account shall

be kept with each estate; and he shall also enter therein the amount, the date, and the expressed purpose of each check countersigned by him.

*Money how Drawn from Depository.*

No moneys so deposited shall be drawn from such depository unless upon a check, or warrant, signed by the clerk of the court, or by an assignee, and countersigned by the judge of the court, or one of the Registers designated for that purpose, stating the date, the sum, and the account for which it is drawn.

*Assignee and Clerk to keep Record of Checks.*

And an entry of the substance of such check or warrant, with the date thereof, the sum drawn for, and the account for which it is drawn, shall be forthwith made in a book kept for that purpose by the assignee or the clerk;

And all checks and drafts shall be entered in the order of time in which they are drawn, and shall be numbered in the case of each estate.

*Notice to Depository.*

A copy of this rule shall be furnished to the depository so designated, and also the name of any Register authorized to countersign said checks.

**XXIX.**

**Prepayment or Security of Fees.**

*By Parties requiring Service.*

The fees of the Register, marshal, and clerk, shall be paid or secured in all cases before they shall be compelled to perform the duties required of them by the parties requiring such service.

*Witness Fees.*

And in the case of witnesses their fees shall be tendered or paid at the time of the service of the summons or subpoena, and shall include their traveling expenses to and from the place at which they may be summoned to attend.

*Payment from Fund in Court.*

The court may order the whole or such portion of the fees and costs in each case to be paid out of the fund in court in such case as shall seem just.

*Assignee to Account for Deposits with Register, etc.*

The funds deposited with the Register, marshal, and clerk shall, in all cases where they come out of the bankrupt's estate, be considered as a part of such estate, and the assignee shall be charged therewith, and shall not be allowed for any disbursements therefrom, except upon the production of proper vouchers from such officers, respectively, given after the due allowance of their respective bills.

XXX.

**Fees and Costs.**

*Clerks.*

The fees of the clerk shall be the same as now allowed by law for similar services in the general fee-bill, Section 828 Revised Statutes, except as herein provided; but no charge shall be made for filing any paper previously filed with the Register. Also,

- For entering memoranda or minutes of Register, each folio..... \$0 10
- For sending notice to creditors by mail, each..... 15
- For inserting notice in newspaper.. 50
- (The necessary cost of advertising to be paid as an expense of the estate.)
- For taxing the costs in each case... 1 00
- and for each folio of taxed bill. 10

*Registers.*

The following and no other fees shall be allowed to the Register:

- For filing and entry of the general order of reference, and for office-rent, stationery, and other incidental expenses of proceedings, conducted in the usual office of the Register, to be allowed once only in any cause..... \$5 00
- When the proceedings are not conducted in the usual office of the Register, but in some other city or town, he shall be allowed for each day employed in going, attending, and returning..... 5 00

Also, in such case, traveling and incidental expenses of himself and of any clerk or other officer attending him, which expenses and fees

shall be appropriated among the cases, as provided in Section 5 of the act, or Section 5125 of the Revised Statutes.

- For each day's service while actually employed under a special order of the court, a sum to be allowed by the court, not exceeding..... 5 00

But only one *per-diem* allowance to be made for a single day, and no duplication of such allowances to be made for different cases on the same day; and no other allowance shall be made for clerk hire except as above stated.

- For every affidavit to any petition, schedule, or other proceeding in bankruptcy, except proof of debt by a creditor or his agent, for each oath and certifying the same..... 25
- For examining petition and schedules and certifying to their correctness..... 3 00
- For every warrant in bankruptcy, or other process, issued and directed to the marshal (not including warrants for payment of money or anything other than process)..... 2 00
- For each day in which a general meeting of creditors is held, and attending same..... 3 00
- For notification to assignee of his appointment..... 50
- For assignment of bankrupt's effects 1 00
- For every bond with sureties..... 1 00
- For every application for a general meeting of creditors..... 1 00
- For every summons or subpoena requiring the attendance of a bankrupt, a bankrupt's wife, or a witness for examination, for each person summoned..... 10
- For taking depositions, including proofs of debts, and examination of bankrupt or his wife, for each folio..... 20
- For certifying proof of debt as satisfactory..... 25
- For copies of depositions and other papers, each folio..... 10
- For each notice which the Register may be required to send to or serve on any creditor (which shall include for postage and stationery) 15

For mileage in making personal service when necessary the same as allowed by law to the marshal.	
For inserting notice in newspaper when required.....	50
(Costs of advertising to be allowed as part of the expenses of the estate.)	
For each order for a general dividend.....	8 00
For compensation of dividends.....	8 00
In addition thereto, for each creditor	10
For every judicial order made by a Register, necessary or proper to be made by him, and not herein otherwise specially provided for, and not including matters merely ministerial.....	1 00
For every discharge where there is no opposition.....	2 00
For auditing the accounts of assignees.....	1 00
— and for each additional hour necessarily employed therein, after the first hour.....	1 00
For every certificate of question to the District Court or judge, under Sections 4 and 6 of the act, or Sections 5009 and 5010 of the Revised Statutes.....	1 00
For preparing such certificate, each folio.....	20
For each folio of memorandum sent to the clerk.....	10
For countersigning each check of assignee.....	10
For filing every paper not previously filed by the clerk, and marking and identifying every exhibit....	10

*Fees for Proving Debts.*

(Fees paid by creditors for establishing their debts shall be entitled to rank with other fees and costs in the case under Section 5101, Revised Statutes.)

*Marshals.*

The fees of the marshal shall be the same as are allowed for similar services by the general fee-bill in Section 829 of the Revised Statutes, as modified by Section 5126, including additional fees allowed by the latter Section for distinct services; but no allowances shall be made under the last clause of Section 5126, commencing with the words "For cause shown."

The marshal shall be allowed for each hour necessarily employed in making inventory of bankrupt's property.....	\$1 00
— and for each folio of inventory	20
For each hour actually and necessarily employed in personal attention in taking care of bankrupt's property.....	1 00

*Marshal's Disbursements.*

(No other allowance to be made for custody of property, except for actual disbursements, which shall, in all cases, be passed upon by the court.)

*Assignees.*

The fees and allowances of assignees shall be as prescribed and provided for in Sections 5099 and 5100 of the Revised Statutes; provided that, in addition to disbursements made, no allowance shall be made other than the commissions provided for in Section 5100, except as hereinafter specified; and said commissions shall be calculated but once upon the amount of moneys received and paid, and not upon both the receipt and payment thereof. Besides which, there shall be allowed to the assignee as follows:

For serving or sending notices to creditors, or publishing the same, when required to be done by the assignee, the same amount allowed to the Register for like services.	
For each hour necessarily employed in making inventory or supplemental inventory of bankrupt's property, or verifying marshal's inventory.....	\$1 00
For each folio of inventory or supplemental inventory made by assignee.....	20
For all services in designating the exempt property of a bankrupt, and filing report thereon.....	5 00
For attending a general meeting of creditors.....	8 00
For every deed for real estate sold..	2 00
For drawing and filing each monthly report.....	1 00
For drawing and filing each quarterly report, not exceeding four, unless specially allowed.....	5 00

For each general account submitted to a creditors' meeting, not exceeding two, unless specially allowed	10 00
For all services in paying a general dividend, or executing an order of final distribution, and making report thereon, including all disbursements.....	5 00
In addition, for each creditor to whom a dividend is paid.....	25

#### *Witnesses and Jurors.*

The fees of witnesses and jurors shall be the same as prescribed in the general fee-bill, in Sections 848 and 852 of the Revised Statutes.

#### *Attorneys.*

No allowance shall be made against the estate of the bankrupt for fees of attorneys, solicitors, or counsel, except when necessarily employed by the assignee, when the same may be allowed as a disbursement.

#### *Assignee for Custody of Property.*

And no allowance shall be made to the assignee for custody of the bankrupt's property, except necessary disbursements in relation thereto.

#### *Necessity for Disbursements.*

The necessity and reasonableness of disbursements shall in all cases be passed upon by the court.

#### *Enforcing Return of Excessive Fees.*

Any money received by either of the officers mentioned, in excess of lawful fees or compensation, shall be ordered by the judge to be paid into court, and such order may be enforced, if necessary, by attachment as for contempt.

#### *Bankrupt Discharge.*

No bankrupt's discharge shall be refused or delayed by reason of the non-payment of any fees except the fee for his certificate of discharge.

#### *Taxation of Costs.*

#### *Filing Statement.*

Ten days before the day fixed for the consideration of the assignee's final account, or at any other time fixed by the

court on its own motion, or on the application of any person interested, the clerk, marshal, and register shall file with the clerk a statement of fees, including prospective fees for final distribution, which shall exhibit, by items, each service and the fee charged for it, and the amount received.

#### *Auditing.*

Said clerk shall tax each fee-bill, allowing none but such as are provided for by these rules, which taxation shall be conclusive, reserving to any party interested exceptions to the bills as taxed, which shall be decided by the court.

#### *Office of Auditor.*

The office of auditor is hereby discontinued.

### XXXI.

#### *Costs in Contested Adjudications.*

##### *Of Petitioning Creditor.*

In cases of involuntary bankruptcy, where the debtor resists an adjudication, and the court, after hearing, shall adjudge the debtor a bankrupt, the petitioning creditor shall recover, to be paid out of the fund, the same costs that are allowed by law to a party recovering in a suit in equity.

##### *Of Debtor.*

And in case the petition shall be dismissed, the debtor may recover like costs from the petitioner.

#### *For Preparation of Schedules.*

When a debtor shall be adjudged a bankrupt on the application of a creditor, and shall be required under the provisions of the act to furnish a schedule of his creditors, and an inventory and valuation of his estate, the court, if the estate is large and the required schedule and inventory are likely to be voluminous or complicated, or other good reason exist, may, on the application of such debtor, allow him the services of a clerk or accountant to aid him therein, at such rate of compensation, not to exceed five dollars per day, as the court may deem reasonable.



**XXXII.****As to Forms and Schedules.***The Old Forms Retained.*

The several forms specified in the schedules annexed to the former general orders for the several purposes therein stated shall be observed and used, with such alterations as may be necessary to suit the circumstances of any particular case.

*New Forms for Returns of Officers.*

The tabular forms hereto annexed shall be used respectively by the several officers named in section nineteen of the amendatory act of June 22, 1874, in making the returns required by said section.

*Power of District Court to Frame Special.*

In all cases where, by the provisions of the act, a special order is required to be made in any proceeding, or in any case instituted under the act in a district court of the United States, such order shall be framed by the court to suit the circumstances of the particular case.

*To be Analogous to General Form.*

And the forms hereby prescribed shall be followed as nearly as may be, and so far as the same are applicable to the circumstances requiring such special order.

*In Proceedings in Equity.*

In proceedings in equity, instituted for the purpose of carrying into effect the provisions of the act, or for enforcing the rights and remedies given by it, the rules of equity practice established by the Supreme Court of the United States shall be followed as nearly as may be.

*In Proceedings at Law.*

In proceedings at law, instituted for the same purpose, the rules of the circuit court regulating the practice and procedure in cases at law shall be followed as nearly as may be.

*Power to Modify Rules to Facilitate Speedy Hearing.*

But the court or the judge thereof, may, by special rule in any case, vary the time allowed for return of process, for appearance and pleading, and for taking testimony and publication, and may otherwise

modify the rules for the preparation of any particular case so as to facilitate a speedy hearing.

**XXXIII.****Omissions and Amendments.***Omission in Schedule.*

Whenever a debtor shall omit to state in the schedules annexed to his petition any of the facts required to be stated concerning his debts or his property, he shall state, either in its appropriate place in the schedules or in a separate affidavit to be filed with the petition, the reason for the omission, with such particularity as will enable the court to determine whether to admit the schedules as sufficient, or to require the debtor to make further efforts to complete the same according to the requirements of the law.

*Application to Amend.*

And in making any application for amendment to the schedules, the debtor shall state under oath the substance of the matters proposed to be included in the amendment, and the reasons why the same had not been incorporated in his schedules as originally filed, or as previously amended.

*Correcting Statement in Examination.*

In like manner, he may correct any statement made during the course of his examination.

**XXXIV.****Proof of Debts.***How Entitled.*

Depositions to prove claims against a bankrupt's estate shall be correctly entitled in the court and in the cause.

*By Co-partner.*

When made to prove a debt due to a co-partnership, it must appear on oath that the deponent is a member of the creditor firm.

*By Agent.*

When made by an agent, the reason the deposition is not made by the claimant in person must be stated.

*By Officer of Corporation.*

And when made to prove a debt due to a corporation, and the corporation has no such officer as cashier or treasurer, the deposition may be made by the officer whose duties most nearly correspond to those of cashier or treasurer.

*Open Account.*

Depositions to prove debts existing in open account shall state when the debt became or will become due.

*Average Due Date.*

And if it consists of items maturing at different dates, the average due date shall be stated.

*Interest Forfeited by Omission.*

In default of which it shall not be necessary to compute interest upon it.

*Averment as to Note or Judgment.*

All such depositions shall contain an averment that no note has been received for such account, nor any judgment rendered thereon.

*Assignee's Duty as to Proof filed with him.*

Proofs of debt received by any assignee shall be delivered to the Register to whom the cause is referred.

*Prepayment Fee for Filing.*

The Register may decline to file any deposition until the fee for filing the same is paid.

*Acknowledgment of Receipt and Sufficiency.*

When a proof of debt is sent by mail to the Register, and it shall be accompanied by the fee for filing it, and the fee for sending a notice to a creditor, the Register shall acknowledge the receipt of it, and state the amount at which he has entered it, and if it shall be insufficient or unsatisfactory to the Register, he shall state the reason.

*Creditor may direct where Notice to be Sent.*

Any creditor may file with the Register a request that all notices to which he may be entitled shall be addressed to him at any place, to be designated by the post-office box or street number, as he may ap-

point, and thereafter, and until some other designation shall be made by such creditor, all notices shall be so addressed.

*Where Sent in Default of Direction.*

And in other cases notices shall be addressed as specified in the proof of debt.

*Of Claims Assigned Prior to Proof.*

Claims which have been assigned before proof, shall be supported by a deposition of the owner at the time of the commencement of proceedings, setting forth the true consideration of the debt, and that it is entirely unsecured, or, if secured, such deposition shall set forth the security, as is required in proving secured claims.

*Assigned after Proof—Notice.*

Upon filing with the Register satisfactory proof of the assignment of a claim proved and entered on the Register's docket, the Register shall immediately give notice by mail, to the original claimant, of the filing of such proof of assignment.

*Subrogation of Assignee.*

And if no objection be entered within ten days, he shall make an order subrogating the assignee to the original claimant.

*Certificate to Court when Assignment Denied.*

If objection be made within the time specified, or within such further time as may be granted for that purpose, the Register shall certify the objection into court for determination.

*By Persons Contingently Liable.*

The claims of persons contingently liable for the bankrupt may be proved in the name of the creditor, when known by the party contingently liable.

*On Contingent Debts when Creditor Unknown.*

When the name of the creditor is unknown, such claims may be proved in the name of the party contingently liable.

*Application of Dividend.*

But no dividend shall be paid upon such claim, except upon satisfactory proof that it will diminish, *pro tanto*, the original debt.

*Of Power of Attorney—Assignment—Consent.*

The execution of any letter of attorney to represent a creditor, or of an assignment of claim after proof, or of the consent of a creditor to a bankrupt's discharge, may be proved or acknowledged before a Register in bankruptcy, or a United States Circuit Court commissioner.

*By Co-partner or Officer of Corporation.*

When executed on behalf of a co-partnership, or of a corporation, the person executing the instrument shall make oath that he is a member of the firm, or duly authorized officer of the corporation, on whose behalf he acts.

*Identity.*

When the party executing is not personally known to the officer taking the proof or acknowledgment, his identity shall be established by satisfactory proof.

*Application to Re-examine Claim.*

When the assignee or any creditor shall desire the re-examination of any claim filed against the bankrupt's estate, he may apply by petition to the Register to whom the cause is referred, for an order for such re-examination.

*Proceedings Thereon—Order for Hearing.*

And thereupon the Register shall make an order fixing a time for hearing the petition, of which due notice shall be given by mail, addressed to the creditor.

*Taking Testimony.*

At the time appointed, the Register shall take the examination of the creditor, and of any witnesses that may be called by either party.

*Expunging, if no Objection.*

And if it shall appear from such examination that the claim ought to be expunged or diminished, the Register, if no objection be made, may order accordingly.

*If Objection, Issue to be Formed.*

If objection be made, the Register shall require the parties then, or within a time to be fixed for that purpose, to form an issue to be certified into court for determination.

*When Petitioner in Default.*

If the petitioner is in default in making up said issue, the petition shall be dismissed.

*When Creditor in Default.*

If the creditor whose claim is re-examined is in default in making said issue, the claim may be diminished or expunged by the Register.

*Review by the Court.*

All orders thus made by the Register may be reviewed by the court on special petition, and upon showing satisfactory cause for such review.

**XXXV.**

**Trial before Marshal.**

*Election in Writing Filed with Clerk.*

If the debtor, under the provisions of Sec. 14 of the Amendatory Act relating to proceedings in bankruptcy, approved June 22, 1874, shall elect to have a trial of the facts before the marshal, he shall make such election in writing, and file the same with the clerk of the court.

*Award of Venire Facias.*

And thereupon the court, on application of the debtor, may award the *venire facias* in said section prescribed, upon and by virtue of which the marshal shall summon twenty-four good and lawful men, inhabitants of the vicinity of the place of trial, and indifferent between the parties, from whom to select the jury to try the said facts.

*Selecting Jury—Challenges.*

And the names of the persons so summoned shall be drawn by lot to make the

said jury, and each party shall be entitled to challenge four persons peremptorily.

#### *Talesmen.*

And if a sufficient number of jurors unchallenged and free from exception shall not appear to make the full panel of twelve men (or such less number as the parties may agree upon) to try the said cause, the marshal shall complete the number by forthwith summoning other proper persons for the purpose.

#### *Jurymen Failing to Appear.*

And any person summoned by the marshal to sit on said jury, and failing to appear without sufficient excuse, shall be returned by the marshal and subject to be fined by the court.

#### *Petitioning Creditor Plaintiff in Trial.*

The petitioning creditor shall be deemed the chief actor, give due notice of trial, and have the opening and close before the jury.

#### *Subpoenas to Witness—Objections to Evidence.*

Subpoenas may be issued to witnesses, and objections to evidence shall be decided by the marshal presiding at the trial, subject to review by the court.

#### *Pleadings.*

The trial shall be had upon the petition to have the debtor declared a bankrupt, and no other pleadings shall be necessary.

#### *The Defence.*

The debtor may, on his part, prove any fact or state of facts which will entitle him to have the case dismissed.

#### *Special Verdicts.*

The jury, if desired, shall find a special verdict upon any point or question of fact stated for that purpose in writing by either party before the case shall have been submitted to them.

#### *General Verdict, Signing, Countersigning, and Return.*

The verdict shall be signed by the foreman of the jury and countersigned by the marshal, who shall immediately return the same to the court with the venire, and any points or questions raised and decided by him at the trial.

#### *New Trial.*

The court, for good and legal cause shown, may set aside the verdict and award a new venire as often as occasion shall require.

### XXXVI.

#### *Composition under Sec. 17 of Amending Act.*

##### *Statement Proposed Composition.*

If at any time after the filing of a petition for an adjudication in bankruptcy, a petition duly verified be filed by the debtor or bankrupt, or by any creditor of such debtor or bankrupt, setting forth that a composition has been proposed by such debtor or bankrupt.

##### *Its probable Acceptance.*

And that he verily believes that such proposed composition would be accepted by a majority in number, and three-fourths in value of the creditors of such debtor or bankrupt, in satisfaction of the debts due from such debtor or bankrupt.

##### *Order for Meeting of Creditors.*

The court shall forthwith order a meeting of the creditors to be called to consider of the said proposition as provided in the 17th Section of the said Amending Act, whereupon such proceedings shall be had as are therein directed.

##### *Register to Preside.*

The Register acting in the case, or if no Register has been assigned, a Register to be designated by the court, shall, at the

time and place specified in the notice for holding such meeting, hold and preside at the same.

*Report to Court.*

And report to the court the proceedings thereof, with his opinion thereon.

*Notice to Creditors by Clerk.*

Upon the filing of which, the clerk shall give the notices to creditors required by said section.

*Action of Court.*

And the court shall at the time therein fixed, proceed to hear and determine the matter as in said section is prescribed.

*Additional Meetings.*

In like manner, additional meetings in relation to such proposed composition, or

any modification thereof, may, upon like application, be called and held, and the proceedings returned in like manner.

XXXVII

**Reference to Sections of Act, etc.**

All orders referring specifically to any section or sections of the original Bankrupt Act, shall be deemed and construed to refer to the corresponding sections respectively, in the Revised Statutes of the United States; for example, Order IX, in referring to Sections 12 and 13 of the Act, shall be construed to refer to Sections 5033 and 5034, respectively, of the Revised Statutes; and so of the rest. And all forms heretofore prescribed shall be adapted to any modification of the law, or of these orders.

# DIGEST OF BANKRUPTCY DECISIONS

IN THE

FIRST TEN VOLUMES OF THE NATIONAL BANKRUPTCY REGISTER  
REPORTS.

## ABSENCE.

See ADJUDICATION,  
AGENTS,  
PROOF OF DEBTS.

### Without the District.

The fortieth section of the Bankrupt Act does not intend that if the debtor "cannot be found" within the district where the proceedings are pending, or have been commenced, that the marshal, as messenger, even if cognizant of the whereabouts of the debtor without the district, shall then prove absence to effect service. Such service is invalid.—*Alabama & Chattanooga R. R. Co. v. Jones*, vol. 5, p. 97.

## ACCOMMODATION NOTE.

See ACT OF BANKRUPTCY,  
COMMERCIAL PAPER,  
ENDORSER.

### 1. Failing to Pay after Protest.

The endorser of a promissory note or bill of exchange, who, after due protest and notice, fails to provide for payment of his liability within fourteen days, thereby commits an act of bankruptcy, and may be adjudged a bankrupt upon the application of a petitioning creditor, and it matters not whether the paper be endorsed for accommodation or in the course of business.—*In re Clemens*, vol. 8, p. 279.

### 2. Commercial Paper.

An accommodation note is not commercial paper within the meaning of the Bankrupt Act.—*Clemens*, vol. 9, p. 57.

## ACCOUNT.

See BOOKS OF ACCOUNT,  
REGISTER,  
SECOND & THIRD MEETING.

### 1. Form of.

Form 35 is the account for the assignee to render where no assets have come to his hands; and where assets have come thereto, Forms No. 37 and 53 constitute the account, and the Register has authority to order the assignee to submit and file the same.—*In re John Bellamy*, vol. 1, p. 64.

### 2. When to Object to.

Creditors are not bound to object to the assignee's account, save at a meeting called pursuant to the provisions of the 28th Section of the act.—*Clark*, vol. 9, p. 67.

## ACCRETION.

See ASSIGNMENT.

### Passes with Property.

The plaintiff, immediately previous to his bankruptcy in March, 1842, had a fee-simple title in Sand street, subject to the public easement, which street then terminated in Lake Michigan, but more than four hundred and fifty feet of accretion now exists between Sand street and the present lake shore.

*Held*, That the interest of Kinzie at the time of his decree in bankruptcy, in Sand street, was property within the meaning of the Bankrupt Act of 1841, which passed by the decree to the assignee, and by *mesne* conveyances came from him to the defendant, and that the right of accretion



was a vested right inseparably connected with the legal title, and passed with it to the assignee.—*Robert A. Kinzie v. Frederick A. Winston*, vol. 4, p. 85.

## ACKNOWLEDGMENT.

See AFFIDAVIT.

## PROOF OF DEBT.

## 1. Of Power of Attorney Unnecessary.

An acknowledgment of a power of attorney authorizing a person to appear for a creditor is not necessary.—*Powell*, vol. 2, p. 45.

## 2. Per Contra.

An attorney cannot act for a creditor at meetings held in the course of proceedings in bankruptcy, unless authorized to do so by a letter of attorney acknowledged before a Register in bankruptcy, or United States Commissioner.—*In re William C. Christley*, vol. 10, p. 268.

## 3. Revival of Debt.

A debt barred by the Statute of Limitations is not revived by its entry on the schedule of liabilities of the bankrupt.—*In re Heman P. Harden*, vol. 1, p. 395.

## ACTS OF BANKRUPTCY.

See ARREST.

CONCEALMENT,  
CONFESSION OF JUDGMENT,  
CONTEMPLATION OF BANKRUPTCY,

FRAUD,  
FRAUDULENT PREFERENCE,  
HUSBAND AND WIFE,  
IMPRISONMENT,

SUFFERING PROPERTY TO  
BE TAKEN,

SUSPENSION OF PAYMENT.

## ACTS OF BANKRUPTCY.

## (a.) WHO MAY COMMIT, pp. 173-4.

I. *Infants*, p. 173.

II. *Insane Persons*, p. 173.

III. *Married Women*, p. 173.

IV. *Railways*, p. 174.

## (b.) WHAT CONSTITUTES, pp. 174-181.

I. *Arrest*, p. 174.

II. *Assignment*, p. 174.

III. *Commercial Paper*, p. 175.

IV. *Concealment*, p. 175.

V. *Confession of Judgment*, p. 175-6.

VI. *Delaying Creditors*, p. 176.

VII. *Insolvency*, p. 176.

VIII. *Legal Process*, p. 176.

IX. *Mortgage*, p. 176.

X. *Payment*, p. 177.

XI. *Preference*, p. 177.

XII. *Sales*, p. 178.

XIII. *Suffering Property to be Taken*, p. 179.

XIV. *Suspension*, p. 179-180.

XV. *Transfers*, p. 181.

XVI. *Unstamped Note*, p. 181.

XVII. *Wages*, p. 181.

(c.) TIME WHEN COMMITTED, p. 181.

## (A.) WHO MAY COMMIT—

I. *Infants*.1. *Infants cannot on Contracts not for Necessaries.*

Infants, at least in regard to their general contracts as subjects of voluntary or involuntary bankruptcy, are not embraced within the provisions of the Bankrupt Act of 1867.—*Walter S. Derby*, vol. 8, p. 106.

II. *Insane Persons*.2. *Insane Person cannot, but may be Adjudicated.*

A person cannot commit an act of bankruptcy while insane; but if when *sane* he has committed such an act, he may be made bankrupt upon a petition *in invitum*, after he has become *insane*. Whether he can obtain a discharge, *quære*.—*In re Pratt*, vol. 6, p. 276.

III. *Married Women*.3. *Feme Coverts cannot, unless Sole Traders.*

A *feme covert* engaging in trade must do so in accordance with the statute of the State; not having done so, and being incapacitated to make contracts, she may avail herself of her coverture to defeat the debt which is the basis of bankruptcy proceedings.—*C. H. & D. P. Slichter*, vol. 2, p. 336.

4. *Where Feme Covert has Separate Estate.*

A petition in bankruptcy was filed against a married woman having a sep-

arate estate, for non-payment of certain promissory notes.

*Held*, Inasmuch as it did not appear on the face of the notes, it was her intention to bind her separate estate, and there being no allegation that it was given for the benefit of her separate estate, or in course of trade, petition must be dismissed.—*Howland*, vol. 2, p. 357.

#### 5. When Given Power to Contract by "Lex Domicilii."

A married woman can only be adjudged bankrupt when the law of her domicile gives her the power to contract.

In Indiana, a married woman, unless possessed of separate estate, is incapable of making a contract.—*Rachel Goodman*, vol. 8, p. 380.

#### 6. In Illinois, when a Trader.

A married woman may be adjudged a bankrupt; and there is no difference between voluntary and involuntary proceedings, so far as the ability to adjudge a married woman a bankrupt is concerned, on the jurisdictional facts being shown.—*Collins*, vol. 10, p. 335.

#### IV. Railways.

#### 7. Railway Corporation may.

A railway corporation may commit an act of bankruptcy, and therefor be adjudged a bankrupt.—*Minnesota R. R. Co.*, vol. 10, p. 86.

#### (B.) WHAT CONSTITUTES ACTS OF BANKRUPTCY.

##### I. Arrest.

#### 8. When Released on Bail.

A debtor having property in New York was arrested on mesne process of State Court, upon a debt of over one hundred dollars, founded on contract, and was released from close custody, on bail, but process was not discharged within seven days.

*Held*, Said debtor had not in respect of the premises committed an act of bankruptcy under the provisions of Section 89 of the Bankruptcy Act, he not having been actually imprisoned for more than seven days on said order of arrest.—*Davis*, vol. 3, p. 339.

#### 9. Although Order of Arrest Improvidently Granted.

A was arrested on mesne process issued out of a State Court, and actually im-

prisoned thereon for a period exceeding seven days. The judge of the State Court, before whom the matter was afterward brought, decided that the order by the commissioner on which A was imprisoned was improvidently made, and ordered A's release on entering common bail, or an appearance to the action. After A had remained imprisoned more than seven days, and before the judge decided the order to have been improperly granted, a petition in bankruptcy was filed against A.

*Held*, That the imprisonment being submitted to for more than seven days before an effort at liberation was made, became an act of bankruptcy.—*B. Cohn*, vol. 7, p. 31.

#### II. Assignment.

#### 10. With Intent to Delay.

Under the Bankrupt Act, an assignment, whether the assignor be solvent or insolvent, with intent to delay, hinder, or defraud, is an act of bankruptcy.—*Randall & S.*, vol. 3, p. 18.

##### (a). General Assignment.

#### 11. Is Act of Bankruptcy.

A general assignment by an insolvent debtor, though made for the benefit of all his creditors, is an act of bankruptcy under the Bankrupt Act of March 2d, 1867.—*Langley*, vol. 1, p. 559.

#### 12.

A general assignment of all a debtor's property for the benefit of all his creditors, without preference, is forbidden by the Bankrupt Act, and is an act of bankruptcy.—*Goldschmidt*, vol. 3, p. 164.

#### 13.

An insolvent debtor executed two chattel mortgages to secure pre-existing debts, and afterwards made a general assignment without preferences for the benefit of all his creditors.

In his answer to petition against him in involuntary bankruptcy, he denied having committed an act of bankruptcy, and denied that he knew or believed himself insolvent when he executed the said mortgages, though he made admissions in such answer that showed that he was legally insolvent, and that he knew the facts upon which the law adjudged him insolvent.

*Held*, Such debtor is conclusively presumed to have intended the necessary effects of such general assignment, which would be to defeat provisions of the Bankruptcy Act. In making such general assignment he therefore committed an act of bankruptcy.—*Seymour T. Smith*, vol. 8, p. 378.

14.

One who is insolvent and undertakes to make a final distribution of his assets must do it through the Bankrupt Court. A trust to sell all a debtor's property and divide the cash ratably among his creditors, is an act of bankruptcy; but a mortgage by a railroad company to secure all its creditors equally out of its earnings, or to pay such as refuse the security their ratable proportion of the proceeds, is not an act of bankruptcy.

*It seems* that a mortgage for money to pay debts ratably would not be an act of bankruptcy even in a trader.—*The Union Pacific R. R. Co.*, vol. 10, p. 178.

15. **Per Contra.**

A debtor knowing himself to be insolvent, made a general assignment for the benefit of his creditors, under the laws of Ohio, in December, 1868, before proceedings in bankruptcy.

*Held*, Such an assignment, when made in good faith, is not necessarily an act of bankruptcy, but it must be entirely clear from taint of fraud.—*Farrin v. Crawford*, vol. 2, p. 602.

III. *Commercial Paper.*

16. **Of Railroad Corporation.**

A railroad company, organized under the laws of Iowa, is neither a banker, broker, merchant, trader, manufacturer, or miner, within the meaning of these words as used in the Bankrupt Law, and cannot be proceeded against in bankruptcy for the mere suspension or non-payment, however long continued, of its commercial paper.—*Winter v. Iowa, Minnetona & North Pacific Railroad Co.*, vol. 7, p. 289.

17. **Lessor of Oil Lands.**

The owner of oil lands, who divides it into leaseholds, and receives the rent in oil, is not a trader within the meaning of the Bankrupt Law, inasmuch as he deals only in the products of his land.

*Hence*, He does not commit an act of bankruptcy by any suspension of payment of his negotiable paper for a period of fourteen days, however multiplied the transactions of his business, through the leases, and however extended his credits.—*Woods*, vol. 7, p. 126.

18. **Accommodation.**

A mere accommodation indorser cannot be adjudged bankrupt for failing to pay such paper.—*Clemens*, vol. 9, p. 57.

19. **Must be given in Commerce.**

The non-payment, at maturity, of promissory notes that are not commercial paper, is no ground for an adjudication of the debtors as bankrupts, on a petition by a creditor in involuntary bankruptcy.—*Samuel Lowenstein and Rosa Lowenstein*, vol. 2, p. 806.

20.

To constitute an act of bankruptcy, the fraudulent stoppage and non-resumption of payment must be of commercial paper given by the debtor in his character as a merchant or trader.—*McDermott Bolt Co.*, vol. 3, p. 128.

21. **Failure to Pay.**

When commercial paper is due, and it is not paid, because without adequate legal excuse, the maker will not, or is not able to pay, and it is continued for the period of fourteen days.

*Held*, That this constitutes an act of bankruptcy.—*Thompson & McClallen*, vol. 8, p. 184.

IV. *Concealment.*

22. **Investment in Stocks to Avoid Execution.**

A debtor will not be adjudicated a bankrupt simply because, after selling his property for the purpose of going into a new business enterprise, he puts the proceeds into an intangible shape to prevent the same being seized on process issued out of a State court.—*Fox v. Eckstein*, vol. 4, p. 378.

V. *Confession of Judgment.*

23. **Intent of Act Determines its Legality.**

In deciding whether giving a warrant to confess judgment is an act of bankruptcy, the character of the alleged bankrupt's

business may be taken into consideration ; and where it appears that the purposes of the warrant of attorney may have been to enable the debtor to continue in business, and that there was no intention to defeat or delay the operation of the Bankrupt Law, it is not a sufficient ground for an adjudication of bankruptcy.—*Leeds*, vol. 1, p. 521.

#### 24. Illegal, if it Gives Preference.

Where the bankrupt, being indebted to a creditor on promissory notes due and to become due, gave him a promissory note payable one day after date, with warrant to confess judgment, and judgment thereon was obtained in November, and execution levied on bankrupt's goods before proceedings in bankruptcy instituted by other creditors in January following.

*Held*, That such act of the bankrupt was an act of bankruptcy, and sought to give a preference to a creditor.—*William H. Fitch et al. v. George B. McGie, Ex parte Sanger*, vol. 2, p. 531.

### VI. Delaying Creditors.

#### 25. Creditor in General.

A debtor who executes a chattel mortgage to secure a pre-existing indebtedness with intent to delay, hinder, and defraud his creditors, commits an act of bankruptcy.—*Walter C. Cowles*, vol. 1, p. 280.

#### 26. A Particular Creditor.

When a creditor is about to get a judgment against his debtor, and the latter makes a general assignment under a State insolvent law for the benefit of his creditors, this is a conveyance with intent to delay, defraud, and hinder the creditor, and is an act of bankruptcy under Section 39 of the Bankrupt Act.—*Langley*, vol. 1, p. 559.

#### 27.

The giving of a note by a debtor, and causing it to be sued for the purpose of preventing an attachment by a creditor, is an act which has a direct and necessary tendency to defeat and delay creditors generally, though it is aimed against one only.—*Williams*, vol. 3 p. 286.

### VII. Insolvency.

#### 28. Insolvency need only be Shown in Particular Cases.

It is not necessary to show a defendant to be actually insolvent to have him adjudged a bankrupt. It is sufficient to show he has committed what the law defines to be an act of bankruptcy, and actual insolvency need only be shown when the act done (is only an act of bankruptcy when done) by one actually insolvent, as a gift or transfer of property.—*Guy Wilson*, vol. 8, p. 396.

### VIII. Legal Process.

#### 29. Appointment of Receiver.

The object and intent of the United States Bankrupt Act of 1867 is to place the administration of the affairs of insolvent persons and corporations exclusively under the jurisdiction of the Federal Courts. Hence the appointment of a receiver for an insolvent insurance company by a State Court is an act of bankruptcy, being a "taking on legal process" within the meaning of the 39th Section of said act, the United States courts sitting in bankruptcy having in such cases exclusive jurisdiction over the property.—*Merchants' Insurance Co.*, vol. 6, p. 43.

### IX. Mortgage.

#### 30. By Solvent Debtor.

A mortgage given by debtor before becoming insolvent, and not in contemplation of bankruptcy, to secure a creditor, although made with an intent to prefer said creditor, is not within any of the inhibitions of the thirty-ninth Section of the Bankrupt Act, and is not, therefore, an act of bankruptcy.—*Dunham v. Orr*, v. 2, p. 17.

#### 31. For Present Value.

Where a petitioning creditor alleges in his petition, as an act of bankruptcy, that on the 29th day of October, 1870, the debtor made certain transfers of real and personal property with intent to delay his creditors, and the debtor, in his answer (which was supported by the proof), showed that the transfers were by way of mortgages, that both mortgages were given to secure the same sum (\$1,080), borrowed by

the debtor on the 29th day of October, 1870, from the mortgagee, in order to relieve the debtor's stock in business from a contested attachment, and thus enable the debtor to go on in his business of manufacturing shingles; that the loan was specifically to settle this attachment suit, and also to pay the only over-due paper of the debtor known by the mortgagee to be outstanding, except only such secured paper as the mortgagee already had.

*Held*, That as the mortgages were based upon a present consideration, and were neither given nor received with any intent to delay creditors, they did not constitute an act of bankruptcy. Petition dismissed at cost of petitioning creditor.—*In re Sanford*, vol. 7, p. 352.

### 32. By Machinist of Tools.

Where defendants, machinists, executed chattel mortgages of tools, goods, etc., to secure the payment of certain debts due creditors and suspended payment shortly after.

*Held*, That an order adjudicating them bankrupts should issue.—*In re Edmond P. Rogers and Miers Coryell*, vol. 2, p. 397.

### 33. By Railroad Corporation.

It is not an act of bankruptcy for a railroad corporation to convey its property in trust to secure bonds to be issued and sold, and the proceeds to be applied to pay all its unsecured debts: the same being done *bona fide*, with a view to enable the company to continue its business, though it may be technically insolvent, or likely to be so soon.

Such a mortgage is not made invalid by the circumstance that the unsecured creditors are offered the right to take the new bonds, or the proceeds thereof, at their election.

*It seems* that a mortgage for money, to pay debts ratably, would not be an act of bankruptcy, even in a trader.

A railroad corporation giving a mortgage of its franchise lands and other property to a trustee, for the equal security or payment of all its unsecured claims, does not thereby commit an act of bankruptcy within the 39th Section of the Bankrupt Act.

A common carrier is not a trader, and a mortgage by a railroad company is not an

act of unusual character; *i. e.*, out of the ordinary course of its business, within the meaning of the Bankrupt Act.—*Union Pacific R. R. Co.*, vol. 10, p. 178.

## X. Payment.

### 34. After Failure to Meet Obligations.

Where a debtor's liabilities exceed his assets, and he has ceased to meet his indebtedness as it falls due, a pledge, payment, transfer, assignment or conveyance of any part of his property, absolutely or conditionally, made while in this condition, is an act of bankruptcy, and constitutes sufficient ground, under the 29th Section of the Bankrupt Act, for refusing him a discharge.—*In re S. P. Warner et al.*, vol. 5, p. 414.

### 35. Of Rent in Full.

The payment of rent in full by an insolvent corporation, in order to prevent the forfeiture of a valuable lease, is a technical act of bankruptcy.—*In re Merchants' Insurance Co.*, vol. 6, p. 43.

### 36. Of Freight.

Where the debtor, being insolvent, paid a freight debt in full, by procuring an order from the railroad for, and furnishing lumber.

*Held*, That the payment was a preference of a creditor, and an act of bankruptcy.—*Farrin v. Crawford et al.*, vol. 2, p. 602.

## XI. Preferences.

### 37. Discriminating between Classes of Creditors.

Every failing debtor who gives a preference to a part of his creditors, thereby commits an act of bankruptcy, and a judgment that he is a bankrupt must follow.—*John T. Drummond*, vol. 1, p. 231.

### 38.

A debtor cannot discriminate among his creditors and prefer any one of them, but under the thirty-ninth section commits an act of bankruptcy if he makes a payment to one creditor before another.—*Morgan Root & Co. v. Mastick*, vol. 2, p. 521.

### 39. Stoppage In Transitu.

Pending negotiations for an extension of time on debtors' business paper, a piano

ordered for a customer who refused to receive it, was returned to the sellers.

*Held*, That the return thereof was not a preference of creditors, or an act of bankruptcy.—*Doan v. Campton & Doan*, vol. 2, p. 607.

#### 40. Fiduciary Debts.

There is no distinction between a fiduciary debt and an ordinary debt, as respects a payment thereof, with intent to give a preference, so as to constitute an act of bankruptcy.—*In re Dibble et al.*, vol. 2, 617.

#### 41. After Composition with all other Creditors.

When a debtor and a preferred creditor know of the insolvency, but erroneously suppose all other creditors have compromised for thirty-five cents in time paper, a transfer so securing the creditor as to create a preference financially is an act of bankruptcy.—*Curran et al. v. Murray et al.*, vol. 6, p. 33.

#### 42.

A man finding himself unable to meet his liabilities, compromised with all his creditors except B, whom he proposed to pay in full if he would give a large extension of time; to this B agreed, and received, as security, an assignment of two judgments, and also, a deed for a lot, which together were supposed to exceed in value the amount of B's claim. At the time of this transfer an agreement was entered into in effect, that whatever was paid on the judgments should be credited on the claim, and the lot was to be returned within twelve months from the date of the transfer, providing the indebtedness was all liquidated. The claim was not paid, however, and more than six months after the assignment, a petition in bankruptcy was filed against A by B, alleging that he had made a disposition of his property out of his usual and ordinary course of business, with intent to hinder and delay his creditors.

*Held*, 1. That B's claim was an existing indebtedness provable in bankruptcy. 2. That A made a disposition of his property with the intent to delay, hinder and defraud his creditors, and that he had com-

mitted an act of bankruptcy.—*Eckfort & Petring v. Greely*, vol. 6, p. 433.

### XII. Sales.

#### 43. By Trustees Executing Statutory Trust.

A sale by the trustees under the provisions of the internal improvement act of Florida, of the stock, franchises, etc., of a corporation organized agreeable thereto, is not an act of bankruptcy.—*Rankin & Pullan et al., Petitioners, v. The Florida, Atlantic and Gulf Central Railroad Company*, vol. 1, p. 647.

#### 44. Stock in Bulk to Change Business.

Where a stock of goods was sold to a *bona fide* purchaser, and where there is no evidence that the vendor was insolvent at the time of the sale; but it appearing on the trial that the purchaser had previously tried to buy the stock, and that the vendor had refused, but finally sold out because he wished to change his business.

*Held*, That an adjudication would not be made on an involuntary petition, setting up the sale of the stock as the only act of bankruptcy.—*In re Valliquette*, vol. 4, p. 807.

#### 45.

Where a partnership was dissolved, and whole stock transferred to the only solvent partner, for the purpose of settling the affairs of the partnership, a sale of the whole stock by such partner is not an act of bankruptcy, for it was designed that a sale by gross should be made, and the evidence rebuts the presumption made by the statute.—*Weaver*, vol. 9, p. 132.

#### 46. In Struggling to Keep up.

The bankrupt law does not recognize every sale of property made by a person in embarrassed or failing circumstances as necessarily a fraud on the act, but only such transfers made for a fraudulent object. Hence a debtor who is unable to command ready money to meet his obligations as they fall due is not forbidden by the said act from making a fair disposition of his property in order to accomplish this object.—*Tiffany, Trustee, v. Lucas*, vol. 8, p. 49.



**XIII. Suffering Property to be Taken.**

**47. Honest Inaction.**

Mere honest inaction in a poor man, when a creditor seeks to make by law a just debt, is not in itself an act of bankruptcy. Adjudication of bankruptcy will be reversed when the only act of bankruptcy charged was "that the bankrupt suffered his property to be taken on legal process with intent to give a preference."—*Wright v. Filley*, vol. 4, p. 611.

**48. Idem.**

Suffering a sale to take place from inability to resist, is not an act of bankruptcy, even if by so doing one creditor should be preferred to another.—*Rankin & Pullan v. Florida O. R. R. Co.*, vol. 1, p. 647.

**49. Idem.**

Under a sound construction of Sections 35 and 39 of the Bankrupt Law, something more than passive non-resistance in an insolvent debtor is necessary to invalidate a judgment and levy on his property, when the debt is due and he has no defense.—*Wilson v. City Bank, St. Paul*, vol. 9, p. 97.

**50. On Fictitious Judgment.**

Where judgment shown to be fictitious, was obtained against debtor prior to the passage of the Bankruptcy Act, on which judgment execution was issued and property of the debtor was levied upon after the passage of the act.

*Held*, That the debtor had procured or suffered his property to be taken by legal process, and had transferred his property with intent to delay, hinder, and defraud his creditors, and had thereby committed acts of bankruptcy.—*Julius Schick*, vol. 1, p. 177.

**51. When Firm Insolvent.**

Where a firm is insolvent, it is an act of bankruptcy for a member thereof to suffer its property to be taken on legal process, with intent to give a preference to a creditor of the firm.—*Black & Secor*, v. 1, p. 353.

**52. Appointing Receiver.**

The appointment of a Receiver for an insolvent insurance company by a State court is an act of bankruptcy, being a "taking on legal process," within the meaning of the 39th Section of said act.—*Merchants' Insurance Co.*, vol. 6, p. 43.

**53. Suffering Judgment without Levy.**

The procuring or suffering a judgment to be obtained against him by a debtor, without giving any warrant of attorney, is not itself an act of bankruptcy, yet, if he directly or indirectly assists or facilitates the obtaining of judgment on which an execution has followed, this may be evidence in support of an allegation that he has committed an act of bankruptcy, by procuring or suffering his property to be taken in execution.—*In re Wood*, vol. 7, p. 126.

**54. Procuring Execution to be Levied.**

A debtor suffers his property to be taken on legal process when he allows it to be seized in execution on a judgment obtained against him by default, and thereby commits an act of bankruptcy.—*In re Forsyth & Murtha*, vol. 7, p. 174.

**55. Since Amendment.**

Since the amendment of June 22d, 1874, it is not an act of bankruptcy for one, insolvent, to "suffer his property to be taken," etc., he must "procure," etc.—*In re Isaac Scull*, vol. 10, p. 165.

**XIV. Suspension.**

**56. For Fourteen Days, in absence of Fraud, not Act of.**

A suspension of payment of commercial paper for fourteen days is not, in the absence of fraud, an act of bankruptcy.—*In re William Leeds*, vol. 1, p. 521.

**57. Idem.**

The suspension of payment by a manufacturing company, and non-resumption of payment within fourteen days, does not of itself constitute an act of bankruptcy unless such suspension is fraudulent.—*Jersey City Window Glass Co.*, vol. 1, p. 426.

**58. Idem.**

Stoppage and non-resumption of payment of commercial paper for a period of fourteen days, is not an act of bankruptcy, unless fraudulent, and this must be distinctly alleged in the petition and accompanying affidavits, and if fraud be not alleged, an order to show cause should be refused.—*In re Cone & Morgan*, vol. 2, p. 21.

**59. Idem.**

A firm suspended payment of their commercial paper and did not resume within fourteen days, but obtained an extension of time from most of their creditors; one creditor withheld assent, and petitioned to have the firm adjudged bankrupt, to which one member of the firm made answer of denial, the other member making default,

*Held*, That such suspension was not of itself an act of bankruptcy. Mere insolvency is not an act of bankruptcy.—*Doan v. Compton & Doan*, vol. 2, p. 608.

**60. Per Contra Mere Suspension is Act of.**

When payment of commercial paper is not resumed within fourteen days, it is not necessary that the original stoppage should have been fraudulent to constitute it an act of bankruptcy.—*Weikert & Parker*, v. 3, p. 27.

**61. Idem.**

When the paper is due and it is not paid, because without adequate legal excuse the maker will not or is not able to pay, and it is continued for the period of fourteen days.

*Held*, That this constitutes an act of bankruptcy.—*In re Thompson & McClallen*, involuntary bankrupts, vol. 8, p. 185.

**62. Idem.**

A suspension of payment of his commercial paper by a solvent trader, and non-resumption of such payment within a period of fourteen days, is *per se* fraudulent, and is an act of bankruptcy.—*Hardy, Blake & Co. v. Bininger & Co.*, v. 4, p. 262.

**63. A Single Note.**

It seems that a single act of stopping payment followed by a non-resumption for fourteen days, is *prima facie* an act of bankruptcy within the meaning of the Bankruptcy Act.—*In re McNaughton*, vol. 8, p. 44.

**64. Idem.**

A suspension of payment of one piece of commercial paper for fourteen days with-

out legal excuse, is an act of bankruptcy.—*In re Wilson*, vol. 8, p. 396.

**65. By Endorser.**

The endorser of a promissory note or bill of exchange, who, after due protest and notice, fails to provide for payment of his liability within fourteen days, thereby commits an act of bankruptcy, and may be adjudged a bankrupt upon the application of a petitioning creditor, and it matters not whether the paper be endorsed for accommodation or in the course of business.—*In re Clemens*, vol. 8, p. 279.

**66. Under Injunction.**

A suspension of payment of commercial paper for fourteen days, when at the time of such suspension the debtor was enjoined by the Bankrupt Court from making any transfer or disposition of his property, is not an act of bankruptcy.—*Edward Pratt*, vol. 9, p. 47.

**67. On note dated prior to Bankrupt Act.**

A debtor does not commit an act of bankruptcy who stops payment of the note, given long before the passage of the Bankrupt Act, and does not resume payment subsequent thereto, up to the filing of the petition in bankruptcy.—*Mendenhall v. Carter*, vol. 7, p. 320.

**68. Doubtful Claim.**

Where it is shown that a person who is possessed of a large property has not suspended payment of his debts and commercial paper generally; that he is prosecuting a regular business wholly unconnected with the transactions in respect to which a particular note was given; that he failed to pay the note in question, under advice of counsel, because of a good defense thereto, namely, want of consideration, such person will not be adjudged a bankrupt because of the non-payment of such note although it be held by a person other than the payee, when the payee had passed it away in violation of the agreement under which the note was given, even though the petitioner was a *bona fide* holder for value, he having brought a suit on the note in a State court; the proper forum for the

determination of the question of the maker's liability is the court in which the suit on the note is pending.—*In re William Manheim*, vol. 7, p. 342.

**XV. Transfers.**

**69. Inter se by Members of Firm.**

A transfer of firm property from one member of the firm to another, is not an act of bankruptcy within Sec. 39 of the act. Such a transfer is not a fraud upon the creditors of the firm, nor does it hinder or delay them, or constitute a preference, contrary to the provisions of the act.—*Munn*, vol. 7, p. 468.

**70. Of Stock by Railroad.**

An unexecuted agreement by a company to transfer its stock cannot be construed into an act of bankruptcy. The issue at par of the stock of the company not heretofore issued in payment of a *bona fide* debt, would not be a fraud on the creditors. If, however, it was owned by the company as paid up stock lawfully acquired, the transfer thereof to creditors, under such circumstances as would give them an illegal preference, would be an act for which the company could be proceeded against under the Bankrupt Law.—*Winter v. The Iowa, Minnesota and North Pacific Railway Co.*, vol. 7, p. 289.

**XVI. Unstamped Note.**

**71. Void.**

Where an instrument was given purporting to transfer certain accounts, etc., which was unstamped, and for that reason void,

*Held*, that it was not an act of bankruptcy.—*In re Marshall Dunham and Joseph Orr*, vol. 2, p. 17.

**XVII. Wages.**

**72. Payment of.**

Payment of wages to employees, though made in the regular course of business, is an act of bankruptcy if done in contemplation of insolvency; for, although the law prefers an employee to the amount of fifty dollars, this preference must be secured by and through the proceedings in bankruptcy, and not outside of them or indepen-

dent and in spite of the act.—*In re Kenyon & Fenton*, vol. 6, p. 238.

**(c.) TIME WHEN COMMITTED.**

**73. Prior to Bankrupt Act.**

An act of bankruptcy committed a long time before the passage of the United States Bankrupt Act of 1867, is no ground for refusing a discharge.—*Keefer*, vol. 4, p. 389.

**ACTION.**

See EQUITY PROCEEDINGS,  
LIMITATIONS,  
PENDING SUITS.

**1. Form of to Recover Property Converted.**

An assignee may sue in power to recover property converted prior to his appointment, if the conversion was after the commencement of the proceedings in bankruptcy.

But if the conversion took place prior to the commencement of the bankruptcy proceedings, the assignee must file a bill in equity to recover the property.—*Mitchell v. McKibben*, vol. 8, p. 548.

**2. Petition for Distribution.**

A petition to a court to order a distribution of a fund lodged in its Registry, is not regarded as an action or suit within the meaning of the 2d Section of the Bankrupt Law.—*In re Masterson*, vol. 4, p. 553.

**3. On Original Debt after Fraudulent Composition.**

Creditors who have received more than the amount stipulated in the composition deed, without the knowledge of the other creditors, are not thereby barred from bringing an action against the debtor on their original obligation, when such action is brought on the ground that the composition deed was fraudulently procured.—*Elfett et al. v. Snow et al.*, vol. 6, p. 57.

**4. For Property Transferred with Intent to Prefer.**

A. being insolvent, sold and transferred to a creditor, with knowledge of the fact, all his real and personal property.

*Held*, That the sale was in fraud of the act, and the assignee could maintain an action of trover to recover the value of the personal property.—*Foster, Assignee, v. Hackley & Sons*, vol. 2, p. 406.

#### 5. *Idem*, Without Intent, etc.

In an action of trover brought by an assignee in bankruptcy against a creditor, to recover the value of certain property transferred by the bankrupt to him within four months preceding the adjudication of bankruptcy, it not being shown that a preference of creditors or a fraud on the act was thereby intended, and that the transfer was made in pursuance of an agreement entered into long before,

*Held*, That the assignee could not recover.—*Winthrop M. Wadsworth, Assignee of Robert R. Treadwell, v. Edwin S. Tyler*, vol. 2, p. 316.

#### 6. For Stock Subscription.

Where a charter provided, the "subscribers to the stock of this Company shall pay for said stock in manner following: five per cent. down, five per cent in three months, five per cent. in six months, five per cent. in nine months, the balance being subject to the call of the directors, as they may be instructed by majority of the stockholders represented at any regular meeting." In such case, to maintain an action at law for such balance, there must be a call or assessment, or something standing in the place thereof or equivalent thereto, either by the Company or a proper court, to make the stockholder liable.—*George Ohandler, Receiver, et al. v. A. Sidde, a Stockholder*, vol. 10, p. 236.

#### 7. On Contract where Bankrupt in Default.

Where a contract has been terminated solely on account of the default of the purchaser, the seller having been ready to perform on his part, an action will not lie by the purchaser, or by his assignee in bankruptcy, to recover back the payments made by him previous to his default.—*Edward E. Kane v. William Jenkinson*, vol. 10, p. 316.

#### 8. By Assignee in State Court.

A petition was filed by a creditor to restrain the assignee in bankruptcy from prosecuting a certain action of law in the Supreme Court of New York State, to re-

cover the payment of money made contrary to the provision of the thirty-ninth section of the bankrupt act, claiming to recover back the amount so paid.

*Held*, That said act is the law of the State courts as well as of the national tribunals; and if by virtue of that act the State court has no jurisdiction in the action brought against the petitioners, it will so decide upon proper plea, and that no reason appears to compel the assignee to resort to the national tribunals instead of those of the State.—*In re Central Bank*, vol. 6, p. 207.

#### 9.

An assignee in bankruptcy may sue in the State as well as in the United States Court, to recover property disposed of by the bankrupt in fraud of the Bankrupt Act.—*Gilbert v. Priest*, vol. 8, p. 159.

#### 10. Where Transfer valid but for Bankrupt Act.

An assignee in bankruptcy may sue in a State court to recover property transferred prior to the adjudication in fraud of the Bankrupt Act, where but for the provisions of the Bankrupt Act the transfer would have been valid.—*Cook v. Waters et al.*, vol. 9, p. 155.

#### 11. In United States Circuit Court.

Where an assignee in bankruptcy would be entitled to sue a defendant in the Circuit Court of the United States, by the provisions of the Judiciary Act, his being an assignee in bankruptcy does not restrict his application to the Circuit Court to those cases prescribed by the Bankrupt Act.—*Payson v. Dietz*, vol. 8, p. 193.

#### 12. Effect of Limitation on Actions in State Court.

An assignee may sue or be sued in the State court, but section two of the Bankrupt Act of 1867 limits the bringing of an action of this kind to two years from the time the cause of action accrued for or against such assignee.—*Daniel Cogdell v. William J. Exum*, vol. 10, p. 827.

#### ADJOURNMENT.

See Cost,

EXAMINATION,  
MEETING OF CREDITORS,  
ORDER TO SHOW CAUSE,  
REGISTER.

## ADJOURNMENT.

- I. *Order to Show Cause*, p. 183.
- II. *Of First Meeting*, p. 183.
- III. *Of Order for Discharge*, p. 184.
- IV. *Practice*, p. 184.

I. *Of Order to Show Cause.*1. **Effect on right to demand trial by Jury.**

On the return day of a rule to show cause why the debtor should not be adjudged bankrupt, the debtor entered an appearance by his attorneys, and at their request, a continuance was granted generally, they neither filing any plea, demurrer, answer, or demand for a jury trial, or asking for further time in which to plead in either of these ways. On the day to which the case was continued, the debtor asked leave to file a general denial and demand for jury trial. (Form 61), vol. 8.

*Held*, He had waived his right by not filing it on the return day, or getting special leave to file at the adjourned day.—*Sperry*, vol. 8, p. 142.

2. **Effect on Right to Intervene.**

That where the parties appear and join issue and no further proceedings or adjournment is had, the matter is to be considered as pending from day to day until disposed of; hence any other creditor may come in under Sec. 42 of said act upon any such subsequent day, and may prosecute the original petition upon satisfying the court that the original creditor does not intend to prosecute the matter further. A failure to *proceed* confers upon another creditor the right to intervene equally with a failure to *appear*.—*Buchanan*, v. 10, p. 97.

3. **Idem.**

The construction of Sec. 42 of the Bankrupt Act contemplates that the petitioning creditor, abandoning the proceeding, may not appear or may not proceed with the prosecution, and, in either event, any other creditor may intervene, and, on his application, the court may proceed to an adjudication.

This right of intervention it is not in the power of the petitioning creditor or of the bankrupt to cut off or defeat by any arrangement between themselves, and any action of the court which prevents or defeats such right of intervention is erroneous and in violation of the statute.

If in the taking of the proofs or for the

trial by jury, or for the requisite consideration of the court, postponement becomes necessary, the proceeding is nevertheless a proceeding as of the return day, and for all purposes affecting the rights of other creditors to intervene, should be so regarded.—*Lacy, Downs & Co.*, vol. 10, p. 478.

4. **Does not Terminate Proceedings.**

The want of adjournment to a day certain, does not terminate the proceedings, and where the parties appear and join issue, and no further proceedings in adjournment are had, the matter is to be considered as pending from day to day, until disposed of.—*In re William Buchanan*, vol. 10, p. 97.

II. *Of First Meeting.*5. **Warrant to Marshal Imperfect.**

On the due return of warrant by marshal in a case of involuntary bankruptcy, counsel for bankrupts moved for further time to prepare proper schedules, the number of creditors and non-adjustment of accounts having prevented their completion. No one opposing, Register certified the facts and asked for new warrant to issue.

*Held*, the proper course was for the Register to adjourn the meeting of creditors to a day certain, on the ground of non-service of notice to creditors, and to have directed service of new notice, by mail or personally.—*Schepeler et al.*, vol. 8, p. 170.

6. **In Contested Choice of Assignees.**

There can be only one first meeting of creditors, and all adjournments are but continuance of the same. And if there appear any opposition or opposing interest to the appointment of a particular assignee at any stage of the meeting, such opposition is to be considered as continuing until the termination of such first meeting, whether upon the day first appointed or any other day to which such meeting might be continued, unless it affirmatively appeared that such opposition was withdrawn.—*C. H. Norton*, vol. 6, p. 297.

7. **Where Creditors not Notified.**

Where, in proceedings in involuntary bankruptcy, proper publication has been made but no notices had been served upon creditors because the bankrupt did not have sufficient time to prepare his schedules, the proper course is to adjourn the meeting to a day certain, and to direct the



giving, for the adjourned day, of a new notice in respect to the serving by mail, but not in respect of publication. When there is no adjournment in a case where the service of the warrant is defective, the proceedings fall through, and there must be a new warrant.—*Schepeler et al.*, vol. 3, p. 170.

#### 8. Effect of Marshal's Return on.

The marshal's return is only *prima facie* evidence of the matters set forth therein. If, by the return, it appears due notice has been given, the proceedings go on. If, by the return, it appears due notice has not been given, the meeting is adjourned. But the return is not conclusive. For if, although the return states due notice has been given, it satisfactorily appears that due notice has not been given, the meeting must be adjourned.—*W. D. Hill*, vol. 1, p. 16.

### III. Order to Show Cause Against Discharge.

#### 9. Pending Examination of Witnesses.

An adjournment without day, of the proceedings under a petition for discharge, terminates those proceedings, so far as any action under the order to show cause is concerned.—*Seckendorf*, vol. 1, p. 626.

#### 10. Idem.

The time to file objections can be kept open by adjourning any day which may be fixed for showing cause, until a reasonable time has elapsed for the examination of witnesses.—*In re Isaac Seckendorf*, vol. 1, p. 626.

#### 11. Pending Examination of Bankrupt.

Proceedings on the return day of an order to show cause why the discharge should not be granted, can be adjourned by reason of the adjournment of the examination of the bankrupt.—*In re George S. Mason*, vol. 1, p. 271.

#### 12. Idem.

The pendency of the examination of a bankrupt is good cause under General Order 6, for adjourning the hearing on the return of an order to show cause, and such adjournment can be made without requiring creditors to file appearance under General Order 24, objecting to discharge.—*In re John Thompson*, vol. 1, p. 323.

#### 13. Entering Appearance in Opposition.

An appearance for a creditor in opposi-

tion to the discharge of a bankrupt may be entered after several adjournments in the hearing on the order to show cause have been had.—*In re James M. Seabury, Jr.*, vol. 10, p. 90.

#### 14. After Appearance in Opposition into Court.

Where a creditor appears and opposes the discharge of a bankrupt before the Register, the Register must make a certificate of his proceedings, stating such opposition, and return the papers into court in like manner as if there were no opposition.—*Wm. H. Hughes*, vol. 1, p. 226.

### IV. Practice.

#### 15. Subject to Discretion of Register.

In questions of postponements and of cases of adjournments before Registers, they must exercise proper legal discretion, subject to this rule; they have entire legal control of cases before them, and must exercise their best judgment in preventing unnecessary and unreasonable delays.—*In re Hyman*, vol. 2, p. 333.

#### 16. Of Issue of Law into Court.

Bankrupt filed his petition to be adjudicated a bankrupt on the 25th of June, 1867, and was so adjudicated on September 12th, following. During his examination before the Register by creditors, he testified to receiving \$5,000 about August 25, 1867, and being asked what became of it, objected to the question, which objection the Register overruled. The bankrupt requested that the question so raised be adjourned for the decision of the court, and the Register declined. A special case was thereupon made and submitted by the attorneys of the bankrupt and creditors respectively.

*Held*, That the Register was correct in declining to adjourn the question into court as an issue of law.—*Chas. G. Patterson*, vol. 1, p. 125.

#### 17. Waiver by Argument before Register.

Scheduled creditors filed proof of debt, and made motion for an order to examine bankrupt, before day of first meeting of creditors. Bankrupt objected. Register granted motion after argument, and bankrupt moved the question be adjourned for



decision by the court. Questions and issue were tendered; but the creditors declined to receive same, or join issue. Register then declined to grant motion of bankrupt, who objected to his action, and thereupon requested questions to be certified to the judge.

*Held*, That the objection of the bankrupt to the motion for his examination raised an issue of law, which the Register should have adjourned for the judge's decision, without any request; but such adjournment was a proceeding that might be waived, and it was waived by the bankrupt submitting the matter upon argument for the Register's decision, which disposed of it. No obligation rested on the Register after such decision to adjourn the points of the bankrupt into court.—*In re Chas. G. Patterson*, vol. 1, p. 101.

### 18. Fees of Witness.

The fees of a witness must be tendered or paid to him at the time of the service of the summons or subpoena.

If there be an adjournment, the witness must be paid for another day's attendance, before he is bound to attend on the adjourned day.—*In re Wm. Griffen*, vol. 1, p. 371.

## ADJUDICATION

See ABSENCE,  
ACTS OF BANKRUPTCY.  
ALIENS,  
ASSIGNMENT,  
BANKRUPT,  
CORPORATION,  
DEATH OF BANKRUPT,  
DEBTS,  
EXAMINATION,  
INJUNCTION,  
INSOLVENT LAWS,  
JURY TRIAL,  
MARRIED WOMEN,  
PARTNERS,  
PETITION,  
PRACTICE,  
PREFERENCE,  
PROOF OF DEBTS,  
REGISTER,  
SERVICE OF PAPER,  
SETTING ASIDE DIS-  
CHARGE.

ADJUDICATION, pp. 185–192.

- I. *Legal Status*, p. 185.
- II. *For What Granted*, p. 187.
- III. *Who May Be*, p. 189.
- IV. *Review of*, p. 189.
- V. *Register May Make*, p. 190.
- VI. *Practice in*, p. 190.
- VII. *Opposing*, p. 190.
- VIII. *Petitioning Creditor—Debt*, p. 190.
- IX. *Setting Aside*, p. 191.
- X. *Effect of, generally*, p. 190.
- XI. *Effect of, on Remedies*, p. 192.
- XII. *Relation, Back of*, p. 192.

### I. *Legal Status.*

#### 1. Order of Adjudication.

The adjudication of bankruptcy is merely a certificate or order, made by an authorized officer, to the effect that the debtor has become bankrupt.

It is nothing but a judicial finding of the fact that an act of bankruptcy was committed by the debtor at some time prior to the time the adjudication is made.—*Patterson*, vol. 1, p. 125.

#### 2. On Second Petition while First Pending.

The debtor, on voluntary petition, was adjudged a bankrupt on the 17th of Feb., 1868, but neglected to make application for final discharge until the 3d of May, 1869. It appearing to the court that no assets had come to the hands of the assignee, and that the application for discharge was not made within one year from the date of adjudication, his discharge was refused. The debtor afterwards filed a new petition in bankruptcy, and was adjudged a bankrupt, and on motion of the creditors to vacate the adjudication and strike the petition from the file,

*Held*, That the refusal of the court to grant a discharge upon that ground was no bar to the new proceedings.—*In re Farrell*, vol. 5, p. 125.

#### 3. Minute of Judge on Papers is not.

Where the district judge for the southern district of New York privately signed the form of an adjudication of bankruptcy, on the 1st day of March, and indorsed on the same the words and figures "Filed March

1st, 1871, S. B.," and on the 2d day of March granted a re-argument of the application of the petitioning creditor, in another district, for leave to intervene and oppose an adjudication in this district, and at such re-argument, on the 3d day of March, a certified copy of an adjudication made in such other district on the 2d day of March, having been produced and read, the district judge produced the paper which had been signed by him on the 1st of March, but which, during the interval, had been in the sole knowledge and possession of the said judge, and had neither been entered with the clerk nor promulgated as an adjudication of the court.

*Held*, That the said paper operated as an adjudication only as of the time when it was so produced in court, and promulgated, to wit, as of the 3d of March, and that the adjudication which was regularly made and entered in the other district on the 2d of March, took precedence as the earlier adjudication.—*In re Boston, Hartford and Erie R. R. Co.*, vol. 6, p. 222.

#### 4. Injunction Prior.

An injunction was granted on an order to show cause, before adjudication in bankruptcy had taken place, to restrain the sheriff and all other persons from selling the property of the alleged bankrupt, on a judgment obtained by default in a suit brought in the State court. The sheriff moved to dissolve the injunction, because the court has exceeded its just power, and cannot lawfully restrain the judgment creditor from selling the property in question, the judgment not being impeachable for fraud, or as preference under the Bankrupt Act, the judgment having been docketed before the filing of the petition.

*Held*, Neither the judgment nor the levy of execution divests the alleged bankrupt of his property, and he would be bound to include such estate in his inventory if adjudged a bankrupt; and further, that the Bankruptcy Court may, in the exercise of a lawful jurisdiction, restrain by injunction the sale of property, under an execution, issued from a State court, even before the commencement of proceedings in bankruptcy.—*In re Lady Bryan Mining Co.*, vol. 6, p. 252.

#### 5. Subsequent Ratification by Minor will not Validate.

This is a question of jurisdiction, and the subsequent ratification and confirmation by Derby, of the proceedings against him, can have no effect to give to the court authority and jurisdiction as of the time of the adjudication.—*In re Derby*, vol. 8, p. 106.

#### 6. It is a Civil Proceeding.

A proceeding to have a debtor adjudged bankrupt is a civil and not a criminal proceeding.—*Forest*, vol. 9, p. 278.

#### 7. Validity Determinable by Law as Existing when Made.

The judgment of adjudication based upon a petition conforming to the provisions of law in force when made, is valid, and as binding upon the debtor and his creditors as if the amended act had not been passed; the adjudication removed the case beyond legislative control.—*In re Raffauf*, vol. 10, p. 69.

#### 8. Law at Time Order Asked for, Governs not at Time Petition Filed.

Where a petition to have a debtor adjudged a bankrupt was returnable on June 13th, 1874, and the debtor made no appearance, the case was adjourned. On application after June 22d, 1874, for adjudication by default,

*Held*, For an adjudication after the approval of the amendatory act, the petitioner must allege and prove the facts, which by said act are made prerequisites for adjudication.—*Isaac Scull*, vol. 10, p. 166.

#### 9. The Judge's Direction to Enter, is not per se, an.

A petition was filed against H., January 17th, 1874, and on the return of the order to show cause, the debtor appeared, denied the acts of bankruptcy, and demanded a trial by the court. March 18th, 1874, a memorandum, signed by the initials of the judge, was made on the petition, directing that an order of adjudication be entered. No such order was entered prior to June 22d, 1874. On an application to sign such order, *nunc pro tunc*, as of March 18th,

*Held*, That until the entry of a formal order of adjudication, the debtor cannot be considered as having been adjudged a

bankrupt, and therefore, in this case, on the 22d day of June he remained "to be adjudged a bankrupt," and on that day the court was deprived of the power to adjudge a debtor a bankrupt, on a petition filed since December 1, 1873, except in cases where it is filed by one-fourth in number and one-third in value of the creditors.—*In re Hill*, vol. 10, p. 133.

#### 10. Legislative Power Cannot Vacate.

A was adjudged a bankrupt on a creditor's petition, filed March 30th, 1870, before the passage of the amendments approved June 22d, 1874. On an application for an order permitting one-fourth in number and one-third in value of the creditors to join in the petition, in compliance with Section 39 of the Bankrupt Act,

*Held*, That the decree of adjudication having been rendered prior to the approval of the amendatory act, it stands as the decree of the court.

That it is not in the power of the legislative department of the government to so far interfere with the judicial department as to vacate the judgments and decrees of the latter.—*In re William J. Pickering*, vol. 10, p. 208.

#### 11. Amendment, 1874.

The provision of the Act of June 22d, 1874, amendatory of the Bankrupt Act, requiring one-fourth in number and one-third in amount of the creditors to join in a petition for an adjudication of bankruptcy, in cases commenced prior to its passage and since December 1, 1873, does not apply to any of such cases in which there had been an adjudication prior to the date of said act.

A petition in bankruptcy is an action of suit, and adjudication of bankruptcy thereon is a final judgment, which judgment is beyond the power of Congress to annul or set aside.—*In re C. B. Comstock & Co.*, vol. 10, p. 451

#### II. For What Granted.

#### 12. Discriminating between Classes of Creditors.

Every failing debtor who gives a preference to a part of his creditors, thereby commits an act of bankruptcy, and a judgment that he is a bankrupt must follow.—*In re John T. Drummond*, vol. 1, p. 231.

When two distinct matters, each of which contains a good cause of action or defense, are alleged conjunctively, it is enough if either of them be satisfactorily proved.—*Ib.*, vol. 1.

#### 13. Suffering Property to be Taken.

A debtor will not be adjudicated a bankrupt simply because, after selling his property for the purpose of going into a new business enterprise, he does not put the proceeds into a tangible shape to prevent the same being seized on process issued out of a State court.—*Fox v. Eckstein*, vol. 4, p. 373.

#### 14. Not Against Railroad Suspending Payment—Commercial Paper.

When the bankruptcy proceedings are based on the 9th clause of the 39th Section of the Bankrupt Act of 1867, as amended, it is necessary to aver and prove that the debtor was either a banker, broker, merchant, manufacturer, miner or trader, and as the character of the Alabama and Chattanooga Railway Company does not authorize it to carry on either of these pursuits, it does not come within the provisions of the 9th clause of Section 39, as amended.

As the petition upon which the adjudication of this railroad company was made, did not allege that it was either a banker, broker, merchant, manufacturer, miner or trader, and as no proof thereof was offered to this effect, the irresistible conclusion is that upon that petition and the proofs presented to the court, this railroad company should not have been adjudicated a bankrupt.—*Alabama and Chattanooga R. R. Co. v. Jones*, vol. 5, p. 97.

#### 15. Imprisonment.

Where it is proved that the bankrupt has been imprisoned but seven days exclusive of the first day, this of itself is not sufficient to support an adjudication of bankruptcy.—*Hunt, Tillinghast & Co. v. Pooke & Steere*, vol. 5, p. 161.

#### 16. Supported by Submission to Illegal Imprisonment more than Seven Days.

A was arrested on mesne process, issued out of a State court, and actually imprisoned thereon for a period exceeding seven days. The judge of the State court, before whom the matter was afterward

brought, decided that the order by the commissioner on which A was imprisoned, was improvidently made, and ordered A's release on entering common bail, or an appearance to the action. After A had remained imprisoned more than seven days, and before the judge decided the order to have been improperly granted, a petition in bankruptcy was filed against A.

*Held*, That the imprisonment being submitted to for more than seven days, before an effort at liberation was made, became an act of bankruptcy.—*In re Cohn*, vol. 7, p. 81.

#### 17. Suspension of Payment — Secret Partner.

Any creditor may have his debtor adjudged a bankrupt, although the note which had remained unpaid for a period of fourteen days, and which constituted the act of bankruptcy, was paid before the filing of the petition, if the debtor's whole liabilities were not paid at the commencement of bankruptcy proceedings.

A secret partner, under these circumstances, though entirely solvent, and having committed no other act of bankruptcy, may be adjudged a bankrupt under a petition filed against the two partners.—*In re Ess & Clarendon*, vol. 7, p. 133.

#### 18. Not Granted on Claims disputed in good faith on Technical Grounds.

An adjudication of bankruptcy cannot be had upon notes that were given merely as vouchers or memoranda, and which had no stamps upon them by the maker thereof. Although payment was suspended upon said notes, in fact it was not such a suspension as the Bankrupt Law contemplates, for the reason that the maker claimed to have a good defense to their payment, and honestly believed that he was not legally bound to pay the notes until it should be so adjudged by a competent tribunal.

Petition dismissed with costs.—*In re Westcott et al.*, vol. 7, p. 285.

#### 19. Insolvency alone is not sufficient to Support.

When all the allegations of the petitioning creditor's petition are denied by the answer and amended answer, with the exception of the allegation of insolvency, which is admitted by the respondent, as shown by its inability to meet the legal

demands of its creditors (depositors), an order of adjudication of bankruptcy will not be made until the acts of bankruptcy alleged, or one of them, shall be sustained by evidence taken upon the issue made by the petition and amended answer.—*In re Safe Deposit and Savings Institution*, vol. 7, p. 393.

#### 20. For continuous non-payment of Commercial Paper after lapse of Six Months from Suspension.

A bankrupt applied for and obtained, in the United States District Court, an order to show cause why all proceedings should not be set aside and vacated upon the ground that the act of bankruptcy set forth in the creditor's petition was committed more than six months before the filing of the petition. The court, on the hearing, ordered the adjudication of bankruptcy and all subsequent proceedings to be vacated, but making no provision as to costs. From this order the petitioning creditor petitioned to the Circuit Court for a review and reversal of such order.

*Held*, That the continued non-payment of commercial paper by a merchant or trader, is, as it were, a continuous act of bankruptcy, and not such final, completed, and definite act that it could not, after the lapse of six months, be made the basis of an adjudication.—*In re Jacob Raynor*, vol. 7, p. 527.

#### 21. Proceedings in State Court for Dissolution of Partnership.

After proceedings have been commenced in a State court by one of the members of a copartnership, to put an end to the partnership, and for an account, and the property is in the hands of a receiver, it is competent for another member of the firm to file a petition in bankruptcy, to have himself and the firm adjudged bankrupt.

Whenever it is within the province of the Bankrupt Law to bring the debts of the partnership or its credits or assets within the control of the Bankrupt Court, there can be an adjudication of bankruptcy. The mere dissolution of the firm by the joint act of the partners, or by the act of one, does not put an end to the powers of the Bankrupt Court.

In a case like this, where one of the partners files a voluntary petition, it is not

necessary to an adjudication that there should be an act of bankruptcy.—*In re Noonan*, vol. 10, p. 330.

**22. The above Rule applied to an Involuntary Case.**

After a partnership has been dissolved by mutual consent, a petition in bankruptcy can still be filed against the members of the firm as though there had been no dissolution, when they continue to treat each other as partners, and to act as such in their business transactions with others.—*In re H. C. McFarland & Co.*, vol. 10, p. 381.

**III. Who may be.**

**23. Single Partner.**

An adjudication of bankruptcy may be made against one partner only upon a joint debt. The partnership creditor has such an interest in the separate property of any one of the partners, that he may proceed against one alone.—*In re Melick*, vol. 4, p. 97.

**24. A Solvent Person Adjudicated on Voluntary Petition.**

A debtor, over whom the court has jurisdiction, commits an act of bankruptcy when he files his voluntary petition for adjudication, and a single creditor cannot resist the adjudication by plea and proof that the debtor is really able to pay all his debts.—*In re James L. Fowler*, vol. 1, p. 680.

**25. Firm may be, after Adjudication of one Copartner.**

A firm may be declared bankrupts although one of its members may have already been adjudicated on a creditor's petition.—*Hunt, Tillinghast & Co. v. Pooke & Steere*, vol. 5, p. 161.

**26. Husband and Wife—Copartnership—Wife.**

A partnership of husband and wife can be adjudged bankrupt, and it seems the wife may also, individually, be adjudged a bankrupt.—*In re Kinkead*, vol. 7, p. 439.

**27. Minor cannot be Adjudicated.**

At the time of Derby being adjudicated bankrupt, 18th of December, 1871, he was a minor, not attaining his majority until the 14th of May, 1872. On the 5th of April, 1872, Barton, Alexander & Waller, creditors of Derby, who had not proved their debt in bankruptcy, filed a petition to set

aside the adjudication in bankruptcy, on the grounds: 1. That Derby was a minor. 2. That the petitioning creditor's debt not being for necessities was not a debt provable in bankruptcy, and, therefore, not capable of supporting the petition for adjudication.

Before this case was heard, Derby, arriving at full age, filed a petition ratifying the proceedings in bankruptcy already commenced against him, and also the debt of Stevens (the petitioning creditor), and setting forth the other facts necessary to entitle him to file a petition in bankruptcy, asking not to be adjudicated bankrupt on that petition, but that the proceedings in bankruptcy commenced on the petition of Stevens may be continued, perfected and carried through.

*Held*, Infants, at least in regard to their general contracts as subjects of voluntary or involuntary bankruptcy, are not embraced within the provisions of the act of 1867.

This is a question of jurisdiction, and the subsequent consent and confirmation by Derby can have no such effect as to give to the court authority and jurisdiction as of the adjudication.—*Walter S. Derby*, vol. 8, p. 106.

**28. A Solvent Debtor committing an Act of Bankruptcy may be.**

It is not necessary to show a defendant to be actually insolvent to have him adjudged a bankrupt. It is sufficient to show he has committed what the law defines to be an act of bankruptcy, and actual insolvency need only be shown when the act done is only declared to be an act of bankruptcy when done by one actually insolvent, as a gift or transfer of property.—*In re Guy Wilson*, vol. 8, p. 396.

**29. Married Woman.**

A married woman may be adjudged a voluntary or involuntary bankrupt.—*In re Collins*, vol. 10, p. 335.

**IV. Review of.**

**30. Appeal will not Lie.**

Where an appeal from an adjudication of bankruptcy was made from the District Courts to the Circuit Court.

*Held*, Such appeal would not lie, and



should be dismissed for want of jurisdiction.—*In re Mary A. O'Brien*, vol. 1, p. 176.

#### V. Register may make

##### 31. In Uncontested Cases.

In an uncontested case, the proper Register, by special order of the court, may direct the making of the order to show cause in Form 51, and make it returnable before the court at such Register's office.—*John Bellamy*, vol. 1, p. 96.

#### VI. Practice.

##### 32. Non Attendance of Petitioner.

Where a petitioner in bankruptcy fails to attend before the Register on the day fixed in the order of reference, he may, nevertheless, be adjudicated a bankrupt within a reasonable time thereafter.—*Hatcher*, vol. 1, p. 890.

##### 33. Improper Pending Prior Proceedings.

While proceedings are pending in one district, it is improper to grant an adjudication in another, as the petition first filed takes the precedence.—*In re Warren Leland & Charles Leland*, vol. 5, p. 222.

##### 34. Amendment to Act.

A petition in involuntary bankruptcy was filed June 4th, 1874. The order to show cause was returnable on June 13th, 1874; the debtor failed to appear, and the case was adjourned from time to time by the petitioning creditor until after the approval of the amendatory act of June 22d, 1874, but up to that time no order of adjudication had been entered. On an application of the petitioning creditor for the entry of an order of adjudication, as on a default for want of an appearance,

*Held*, That the provision of the amendment of June 22d, 1874, requiring that in all cases commenced since December 1st, 1873, and prior to the passage of the amendment, the debtor is to be adjudged a bankrupt on the petition of one or more of his creditors, who shall constitute one-fourth at least in number of his creditors, and the aggregate of whose debts provable under the act amounts to at least one-third of the debts provable applies to this case, and that the fact that the debtor has not appeared to make the objection, or to deny that the petitioning

creditors do in fact constitute the requisite number in value and amount, makes no difference.—*Scull*, vol. 10, p. 166.

#### VII. Opposing.

##### 35. By Creditors to Voluntary Petition.

The cases in which creditors may resist an adjudication are when there is some defect in the proceedings, or the court has no jurisdiction.—*James L. Fowler*, vol. 1, p. 680.

#### VIII. Petitioning Creditor Debt.

##### 36. Validity of Debt.

While an adjudication in bankruptcy stands unrevoked, all inquiry into the validity of the debt of the petitioning creditor in the involuntary proceedings, is precluded.—*In re James W. Fallon*, vol. 2, p. 277.

#### IX. Setting Aside.

##### 37. Want of Jurisdiction.

Consent cannot give jurisdiction. It makes no difference whether the proceedings are voluntary or involuntary. As all creditors are parties to and are bound by proceedings in bankruptcy that are regular, an adjudication which is not made and carried on within the proper jurisdiction should be set aside and vacated.—*In re Fogerty & Gerrity*, vol. 4, p. 451.

##### 38. General Creditors cannot Petition.

The court decided that the petition must be dismissed, that there was no party to a creditor's petition except the petitioning creditor and the bankrupt, that the service of an injunction, on any person, or any number of persons, did not make them parties to the proceedings, although any one served might by petition or on motion, have a wrongful injunction dissolved. This, however, did not give him the right to contest or vacate the adjudication, that being a matter in which he could have no interest.—*Karr v. Whittaker et al.*, vol. 5, p. 123.

##### 39. Idem.

The application of creditors other than the petitioning creditors in a bankruptcy proceeding for an order annulling the adjudication on the ground that there was an agreement of compromise preceding the commencement of bankruptcy proceedings, to which agreement the petitioning creditor was a party, must be denied.



The proceeding by a petitioning creditor to force his debtor into bankruptcy is a proceeding *inter partes* like an ordinary action at law or suit in equity, and until the adjudication is had, they are the only parties. No outside creditor has a right to resist the adjudication, or to ask that it be annulled.—*In re Bush*, vol. 6, p. 179.

#### 40. Contra.

*Held*, Any creditor, whether he has proved his debt in bankruptcy or not, may move to set aside an adjudication of his debtor as a bankrupt, whenever such adjudication injuriously affects his interest.—*Derby*, vol. 8, p. 106.

#### 41. Although Debt Voidable by Pleading Penal Statute.

A bankrupt moved to set aside his default for not appearing on the return day of the order, to show cause why he should not be declared a bankrupt, on the ground that the debt of the petitioning creditor was not provable, as it was based wholly upon the sale of intoxicating liquors, and therefore void.

*Held*, That the motion comes too late, and without any excuse being offered or pretended for the delay, that the defense when made by the debtor himself, founded as it is in a violation of the law, is not to be favored by the courts.—*In re Wilson*, vol. 7, p. 505.

#### 42. Where Bankrupt insane at Commencement of Proceedings.

Creditor of B. files a petition against him asking his adjudication in voluntary bankruptcy. The order to show cause was served on him; and on his default to answer he was adjudged a bankrupt, and after the appointment of an assignee, the property of B. was turned over to him, but no distribution among the creditors was ever made.

Sometime thereafter, B. comes into court with a petition, supported by affidavits, showing that he was *non compos mentis* at the time the debts of the petitioning creditors were created, as well as at the time of the institution of proceedings and the adjudication, and until a very recent period.

*Held*, That under the above state of facts, the application to set aside the default and subsequent adjudication should be granted, and B. now allowed to show

cause why he should not be adjudged a bankrupt.—*In re Murphy*, vol. 10, p. 48.

#### X. Effect of.

#### 43. Not Conclusive on Jurisdictional Facts.

The adjudication is not conclusive upon a fact which goes to defeat the jurisdiction of the court over the supposed bankrupt.—*Goodfellow*, vol. 3, p. 452.

#### 44. Exempts Property from Subsequent Attachment.

By an adjudication of bankruptcy under the Bankrupt Act, even when the proceedings were begun on debtor's voluntary petition, his property becomes exempt from subsequent attachment on mesne process.—*George W. Williams v. Charles Merritt*, vol. 4, p. 706.

#### 45. Dissolves Preliminary Injunctions.

An injunction granted under Section 40 of the Bankrupt Act, does not extend beyond the adjudication.—*In re Moses*, vol. 6, p. 181.

#### 46. Stops the Running of Interest Except on Secured Debts.

Interest on provable debts cannot be computed as against the general assets of the bankrupt's estate, beyond the date of the adjudication. A secured creditor may, however, apply the proceeds of his security to the satisfaction of his debt, principal and interest, up to the time of payment, when so stipulated in his contract.—*In re Haake*, vol. 7, p. 61.

#### 47. Does not Conclude Execution Creditors.

An adjudication of bankruptcy *in invitum* is not conclusive evidence as against an execution creditor as to the allegations in the petition for adjudication found to be true by such decree.—*In re Dunkle v. Dreisbach*, vol. 7, p. 72.

#### 48. Rights of Parties Fixed by.

The rights of the parties in a proceeding in bankruptcy are fixed at the date of the adjudication.—*In re Kerr v. Roach*, vol. 9, p. 566.

#### 49. It in all Cases Dissolves Copartnership.

An adjudication of bankruptcy against a copartnership operates in all cases as a dissolution.—*In re Blodgett v. Sanford*, vol. 10, p. 145.

**50. Does not Arrest Prosecution of Appeal.**

An adjudication will not prevent the prosecution of an appeal in the name of the bankrupt or that of his assignee.—*M. J. O'Neil v. George Dougherty*, vol. 10, p. 296.

**XI. Effect as to Remedies of Creditor.****51. Mortgage Creditor, Levying Before, may Sell After.**

A sheriff who levies upon property by virtue of an order to sell under a mortgage foreclosure suit, before the debtor is adjudicated a bankrupt, has a valid lien, and may sell the property after the adjudication. Injunction to restrain purchaser from meddling with the property refused, but leave given the assignee to redeem it within three months if he thinks it worth more than the mortgage debt, interest, and costs.—*Goddard, assignee, v. Weaver*, vol. 6, p. 440.

**52. On Debts Created by Fraud.**

No debt created by a fraud is discharged by an adjudication of bankruptcy.—*Pettis*, vol. 2, p. 44.

**53. Will be Granted on Petition of Fully-secured Creditor.**

A debt wholly or in part secured, either by levy under an execution, by pledge of personal property or mortgage upon real estate, will sustain a petition for an adjudication of bankruptcy. The better practice is, when the debt is fully secured, to waive the security in the petition, but this is not necessary to its support.—*In re Stansell*, vol. 6, p. 183.

**XII. Relation, back of.****54. Commercial Paper.**

An alleged bankrupt, during the pendency of bankruptcy proceedings, and while under an injunction from the United States District Court prohibiting him from selling or disposing of any of his property, sold certain promissory notes belonging to him. He was finally adjudged a bankrupt.

*Held*, That the purchaser acquires no title to the notes in question, as he took with constructive notice at least, and cannot claim to be an innocent purchaser for value. That the adjudication relates back to the time of the filing of the petition, and the assignee may recover the notes or their

value from the purchaser. The payment of the notes having been guaranteed, the court orders that the assignee preserve the notes and guarantees thereon intact, that they may be used as evidence, if required, in proceedings by the purchaser against the guarantor.—*In re Luke*, vol. 6, p. 542.

**ADMINISTRATION BANKRUPT'S ESTATE.****Exclusive Jurisdiction Federal Courts.**

The object and intent of the United States Bankrupt Act of 1867 is to place the administration of the affairs of insolvent persons and corporations exclusively under the jurisdiction of the Federal Courts.—*Merchants' Ins. Co.*, vol. 6, p. 43.

**ADMINISTRATOR.****Property Held by, not Subject to Act.**

Where one of the partners has died, and, under the statute of the State, the partnership property is placed in the hands of the personal representative of the deceased partner to be administered, the Court in Bankruptcy will not, on a petition against the surviving partners, take the estate out of the hands of the administrator.—*In re Daggett, et al.*, vol. 8, p. 287.

**ADMISSION.****Of Number and Amount of Creditors.**

The absence of the allegation as to the number and amount of the creditors in a petition for an adjudication in bankruptcy is not supplied by the admission of alleged bankrupt, and even after such admission is made in writing, the court must be satisfied that the admission was made in good faith.—*In re Keeler*, vol. 10, p. 419.

**ADVANCE BID.****Acted on Binds the Offerer.**

The creditors who applied to set aside the sale having, in such application, offered to bid on a resale a specified sum more for the property than it was sold for, were held to be bound to fulfill their offer.—*In re The Troy Woolen Company*, vol. 4, p. 629.

## ADVANCES.

See COMMISSION MERCHANT,  
COMPOSITION,  
LIEN,  
MORTGAGES,  
MUTUAL DEBTS.

## ADVANCES.

- I. *Generally*, p. 193.
- II. *On Accommodation Note*, p. 193.
- III. *In Composition Deed*, p. 193.
- IV. *On Contract of Sale*, p. 193.
- V. *For Fees of Court*, p. 193.
- VI. *Before and after Petition Filed*, p. 194.
- VII. *Of Rent*, p. 194.
- VIII. *For Security*, p. 194.
- IX. *For Wages*, p. 194.

I. *Generally*.

## 1. To Insolvent to Carry on Business.

Advances made in good faith to an indebted person, to enable him to carry on his business, upon security taken at the time, do not violate either the terms or policy of the Bankrupt Act, since the debtor gets a present equivalent for the new debt he creates and the security he gives.—*Darby's Trustees v. Boatman's Saving Institution*, vol. 4, p. 601

## 2. Obtained by Fraudulent Concealment.

A *cestui que trust* under a trust deed to secure present loans and subsequent advances, will be protected as to such advances against the claims of the borrower who has declared the land a homestead, and has subsequently obtained such advances and fraudulently concealed his declaration of homestead.—*In re J. C. Haake*, vol. 7, p. 61.

## 3. Pledge for, not a Preference.

Shipments of cotton, after the insolvency, to A. & Co., who made advances at the time to the bankrupts, was not a preference, but in effect a sale of so much cotton to procure the necessary means to realize upon their assets.—*Harrison v. McLaren*, vol. 10, p. 244.

## 4. By Commission Merchant.

An agreement to make advances to the debtor to enable him to make a crop, on the contract or assurance that the crop when gathered should be consigned to the party advancing the money, is nothing more than the ordinary business between the commission merchant and planter, and does not create a lien on the crop in favor of the merchant.—*Allen & Co. v. Montgomery*, vol. 10, p. 503.

II. *On Accommodation Note*.

## 5. Protected.

The pledgees of certain promissory notes made by bankrupts, and void between the original parties, but good in the hands of the said pledgees, are entitled to be paid the full amount of their advances thereon out of the assets of bankrupt's estate.—*Bailey, assignee, v. Nichols et al.*, vol. 2, p. 478.

III. *Composition*.

## 6. Of Capital in Trade.

Where money was advanced by A to B for capital in trade, with the understanding that B should not be pressed for payment, but with no binding contract delaying or deferring payment, and no misrepresentation was made to B's creditors, A was held entitled to share in the dividends of B's estate under a composition deed in the usual form.—*Lane & Co. v. Boynton*, vol. 10, p. 185.

IV. *Contract of Sale*.

## 7. Assignee, Rights of Action for.

Where a contract has been terminated solely on account of the default of the purchaser, the seller having been ready to perform on his part, an action will not lie by the purchaser or by his assignee in bankruptcy to recover back the payments made by him previous to his default.—*Edward E. Kane, assignee, v. Wm. Jenkinson*, vol. 10, p. 316.

V. *Deposit for Fees of Court*.

## 8. Assignee charged with.

Where a debtor who has assets makes advancements as security for fees to the clerk, Register, and marshal, he is not to be reimbursed by the assignee out of the estate.

The assignee should be credited with the fee so paid, and not the petitioner.—*Anon.*, vol. 1, p. 122.

#### VI. Prior and Subsequent Filing Petition.

##### 9. Legal and Equitable Claims.

G. was carrying on lumbering operations, and applied to H. for assistance, who made, on February 5th, advances for that purpose, and received as security therefor (and what he should owe him on settlement), an assignment of G.'s permits. G. filed his petition in bankruptcy February 29th. H. made other advances on March 21st, and transferred his claims against G. to P., who received from H. a transfer of the permits, and made other advances to G., to complete the operations. The assignee sold the logs by order of court under Section 25, and the cause was referred to the Register to settle and adjust accounts.

*Held*, That under Section 14, the title of the assignee relates back to the date of filing the petition in bankruptcy; that the advance of February 5th was a legal claim, and should be paid by the assignee; that the advances subsequent to February 29th constitute an equitable claim only, and should be confined to discharging lien claims for labor, getting the logs to market, and stumpage, etc.—*In re Thomas B. Gregg*, vol. 8, p. 529.

#### VII. Of Rent.

##### 10. Proof of, against Estate.

Where the bankrupt has received in advance from a sub-tenant rent for premises rented, in such case the landlord may prove against the bankrupt's estate for so much of the period subsequent to his bankruptcy, as he has received rent, or a gross compensation in lieu thereof.—*John Clancy*, vol. 10, p. 215.

#### VIII. Security.

##### 11. In Anticipation of.

Advances made in good faith while a mortgage is being prepared, and as part of the money agreed to be secured by it, will be protected, though there should be a change of the debtor's circumstances after the money was advanced, and before the deed was delivered.—*Ex parte Ames, in re McKay & Aldus*, vol. 7, p. 230.

##### 12. To Secure Past Debts.

An insolvent trader may mortgage his stock and tools for present and future advances with the actual and honest intent to raise money to continue his business. *It seems*, that such a mortgage would not necessarily be fraudulent though a part of the consideration were an existing debt.

Where the honest intent was clear and the mortgage was made for past as well as future advances, but mainly for the latter, and it appeared that the past advances were already secured upon property reasonably believed to be fully adequate, the mortgage was upheld although it turned out that the former security had not been quite sufficient.—*Ex parte Ames, in re McKay & Aldus*, vol. 7, p. 230.

#### IX. Wages.

##### 13. Assignment of.

Certain workmen employed by bankrupt within six months before bankruptcy were not paid, and applied to L. to advance money on their claims, to enable them to reach their homes, at a distance; L. to be reimbursed the advance, interest thereon, and necessary expenses incurred. An absolute assignment was executed by each to L., having been drawn by a person not a lawyer. L. applies to be paid from the bankrupt's estate the amount so advanced out of fifty dollars to be allowed to each workman as prior liens.

*Held*, The claims and demands in question should be allowed.—*In re Stephen Brown*, vol. 8, p. 720.

#### ADVERSE CLAIMANT.

##### Form of Action against.

An assignee in bankruptcy can proceed against an adverse claimant of property only by action at law or plenary bill in equity; but whether an adverse claimant may not proceed against an assignee by mere petition, *quære?*—*Ferguson et ux v. Peckham, assignee, et al.*, vol. 6, p. 509.

#### ADVERTISEMENT.

##### Of Sale, Gen. Order 21.

The assignee is required, by Section 15 of the Bankrupt Act, to sell all the bankrupt's unincumbered estate, real and personal, which comes to his hands, on such

terms as he thinks best for the creditor. General Order 21 regulates the sales as to advertisements and manner of sale.—*In re George E. White & John E. May*, vol. 1, p. 218.

## ADVICE OF COUNSEL.

See ATTORNEY AND COUNSEL.

## 1. Bankrupt Refusing to Answer.

The bankrupt, under the advice of counsel, must take the risk of deciding whether he will answer or not.

If the creditor chooses, he can, upon said refusal of witness to answer, apply to the district judge, to punish the party as for contempt of court, and upon said application, the said judge will decide whether or not the question is a proper one.—*In re Isaac Rosenfield, Jr.*, vol. 1, p. 319.

## 2. Purchaser Refusing to Take Property.

An injunction to restrain a mortgagee from making a sale of real estate belonging to a bankrupt will be granted when it appears that the mortgagee made a sale of the property before the adjudication of bankruptcy; but the purchaser, under advice of counsel, declined to make payment and receive deeds therefor, and the sale sought to be enjoined is made under the same terms as before, with the appendix, "the above property will be sold for account of whom it may concern."—*Whitman, assignee, v. Butler*, vol. 8, p. 487.

## 3. Must be Asked and Acted on in Good Faith.

If the advice of counsel will be a protection in any case, it must be shown that the bankrupt acted on it in good faith, believing he had a legal right to do what he did, and the question must be one of sufficient delicacy to rebut all possible fraudulent intent in seeking the advice.—*In re Finn*, vol. 8, p. 525.

## AFFIDAVIT

See ACKNOWLEDGMENT,  
POWER OF ATTORNEY,  
PROOF OF DEBT,  
REGISTER.

## 1. Register may take after Petition Filed.

The Register has power to take affidavits and depositions in cases not before

him, at any time after the petition is filed.—*In re Edwin B. Dean & Thomas F. Garrett*, vol. 2, p. 89.

## 2. Requisite for Creditor to Examine Bankrupt.

A creditor, to obtain an order according to form No. 45, for the examination of the bankrupt, under Section 26 of the Act, must apply for such order by petition or affidavit, and show good cause for granting the same.—*In re Julius L. Adams*, vol. 2, p. 95.

## 3. Unnecessary for Assignee to Examine Bankrupt.

The application of an assignee for the examination of the bankrupt under the 26th Section of said Act need not be verified by affidavit, nor is it necessary that the application should specify the matters on which it is proposed to examine the bankrupt, or the particular reasons for the same.—*In re Lanier*, vol. 2, p. 154.

## 4. Idem.

It is not necessary that the application of assignee, for the appearance of bankrupt, should be under oath. A bankrupt may be called upon at any time to submit to an examination, and as the assignee is a quasi officer of the court, it is only necessary that the court should be satisfied of the *bona fide* of his application.—*In re McBrien*, vol. 2, p. 197.

## AFTER ACQUIRED PROPERTY.

See BANKRUPT,  
PROPERTY.

## 1. Does not Pass to Assignee.

Only such property as the bankrupt had at the time of the commencement of proceedings in bankruptcy passed to and vested in the assignee.—*Chas. G. Patterson*, vol. 1, p. 125.

## 2. Bankrupt not Examinable as to.

The time of filing the petition to be adjudicated a bankrupt was the time of the commencement of proceedings in bankruptcy. *Sembla*, the same rule applies to involuntary cases where creditors file petition and adjudication follow. Bankrupt cannot be examined touching property acquired by him after filing his petition to be adjudged a bankrupt.—*In re Charles G. Patterson*, vol. 1, p. 125.

### 3. Unless Connected with his Prior Business.

A bankrupt cannot be examined as to property acquired or business done after the date of filing his petition in bankruptcy, provided he states that the same has no connection with or reference to his state or business prior to said date.—*In re Isaac Rosenfeld, Jr.*, vol. 1, p. 319.

### 4. Lien Creditor.

The bankrupt's final certificate discharges his personal and future acquisitions; but the lien creditor is entitled to satisfaction out of the property subject to lien.—*In re Hugh Campbell*, vol. 1, p. 166.

## AGENT.

See PRINCIPAL AND AGENT.

### 1. Appointment of Attorney by.

An attorney sought to represent certain creditors upon an appointment by their general attorney, who was himself constituted and approved prior to the passage of the bankrupt act, by a power of attorney authorizing him to sign the firm name to any paper writing, proper or necessary to collect or receive debts due, with power of substitution.

*Held*, That the authority of the special attorney was sufficient.—*Wm. H. Knoepfel*, vol. 1, p. 70.

### 2. Principal Charged with knowledge of.

When one constituted attorney for the collection of a debt procured from the debtor a judgment-note for the amount in his own name, and entered it knowing that the debtor was insolvent, there being a clear intent to give a preference within the meaning of the act, though the fact of insolvency was not directly known to the real creditors, such knowledge is imputable to them, and the judgment is invalid.—*Vogle v. Lathrop*, vol. 4, p. 439.

### 3. Cannot Vote for Assignee.

An agent of a creditor proved the claim of his principal in bankruptcy, and sought to vote for assignee.

*Held*, That he could not do so without a power of attorney.—*Jas. J. Purvis*, vol. 1, p. 163.

### 4. Principal Adjudicated Bankrupt for Act of.

Married woman did business in her own name by her husband acting as her agent, and exercising entire control and management of the same in his discretion. She became unable to pay her debts in the ordinary course of business, as persons in trade usually do, and executed mortgages of property to secure creditors on pre-existing debts, and thereafter was adjudicated a bankrupt. On the questions raised upon petition of the assignee to have the said mortgages set aside as invalid,

*Held*, the acts of the husband as agent of the bankrupt, his knowledge and intentions, are the acts, knowledge, and intentions of the bankrupt.—*Graham, assign., v. Starke*, vol. 3, p. 357.

### 5. Exceeding Authority.

Where a trader makes a compromise with his creditors by making a sale of his stock, giving to the creditors part cash and part notes of the purchaser, the same being done in pursuance to an arrangement made with some of the creditors directly, and others through an agent, there is no fraud on the part of the debtor if an agent of one or more of the creditors exceeds his authority in accepting the compromise, and the debtor is ignorant thereof.—*Munger & Champlin*, vol. 4, p. 295.

### 6. Idem. When Common Agent both Parties.

When an agent is sent by an insolvent debtor to compromise with creditors, and some of them, through him, return different terms than those submitted, such agent does not thereby become that of such creditors, but remains an agent of the debtor, and his knowledges, mistakes, and acts are those of his principal, the insolvent. The same effect would be produced if he were deemed the common agent of both parties.—*Curran et al. v. Munger et al.*, vol. 6, p. 33.

### 7. Resorting to Principal.

A party dealing with an agent may resort to the principal to compel performance of the agreement of the agent, unless the contract was made exclusively on the credit of the agent.—*In re Troy Woolen Co.*, vol. 8, p. 412.



**8. To prove Debt Principal must be without United States.**

The absence of a claimant which will render a proof of debt by an agent admissible must be from the United States; nor will the oath of an agent that he is better acquainted with the facts than his principal render the deposition of the agent alone admissible as proof of the debt.—*In re White*, vol. 9, p. 267.

**9. Verification by, to Creditor's Bill.**

The affidavit of an agent or attorney to a creditor's bill praying for an injunction to restrain parties from selling the goods of the bankrupt charged to have been fraudulently transferred to a third party, is sufficient.—*In re J. J. Fendley*, vol. 10, p. 250.

**10. Verification by, under Amendment.**

Where the petitioning creditors constituting one-fourth in number and one-third in value are less than five, and the verification is made by an agent, it is not necessary to state the residence of the principal.—*Simmons*, vol. 10, p. 254.

AGREED CASES.

Questions stated by consent must be by parties in a special case upon proceedings actually had.—*Pulver*, vol. 1, p. 47.

AGREEMENT

**1. A Mere Promise is Not.**

Where the record before the court does not show that a precedent agreement existed, it is not to be assumed. A mere promise does not constitute an agreement.—*Second National Bank of Leavenworth v. Hunt*, vol. 4, p. 616.

**2. To Prefer.**

Any agreement by an insolvent debtor with a creditor (a bank), to create a preference in favor of that creditor, is void if the creditor has cause to believe the debtor insolvent, and he is afterwards proceeded against under the Bankrupt Act.—*Second National Bank of Leavenworth v. Hunt, &c.*, vol. 4, p. 616.

**3. As to Sale Specific Chattels.**

An agreement concerning the sale of specific or ascertained chattels is, *prima facie*, a bargain and sale, and transfers the property therein to the purchaser in con-

sideration of his becoming bound to pay the price therefor; but the *intent* of the parties is to govern, and the contract may provide that the property in the chattel shall remain in the seller until payment, although the possession thereof be given to the buyer in the meantime.—*Wood Mowing and Reaping Machine Co. v. Brooks, assignee*, vol. 9, p. 395.

**4. Agreement by Bankrupt after Discharge.**

A. filed his petition in bankruptcy in December, 1868, and was duly adjudged a bankrupt. He included in his schedules his interest in a tract of land inherited by his wife from her father. In November, 1872, he received his discharge. In the latter part of 1869 a general creditors' bill was brought in a State court by one of the judgment-creditors against the bankrupt, his assignee, and the other judgment-creditors. On the 20th of December, 1872, an agreement in writing was entered into by the attorney in fact, of the judgment-creditors on the one part, and the bankrupt and his wife on the other part, but which the assignee in bankruptcy did not sign. This agreement contained a stipulation that the tract of land belonging to the wife, and some other of the bankrupt's real estate, should be divided into four parts, one of which parts, or so much as might be necessary, should be sold in satisfaction of the judgment-debt of the creditor bringing the bill; another part should be settled on the bankrupt's wife, and the remaining two parts sold for the payment of the remaining debts of the bankrupt, according to their priorities.

*Held*, That the written agreement above-mentioned cannot bind the bankrupt's estate, first, because it is not signed by the assignee; and, second, for the reason that the signature of the bankrupt, who was *civiliter mortuus*, was a nullity so far as the estate was concerned; that the fact that he signed the agreement *after* he received his discharge, makes no difference in this respect;

That the assignee had no power to give consent to a decree of the State court, rendered in accordance with the execution and terms of the said written agreement; that the laws of Congress nowhere give to him

power to become defendant to a suit in another court than the Bankrupt court, commenced after the adjudication.—*In re Geo. W. Anderson*, vol. 9, p. 360.

#### 4. Creditors Estopped by, if acted on by Bankrupt.

Where bankrupt had made an assignment of all his property for the benefit of all his creditors, and the assignee, being unable to act, the property, by written agreement of creditors, was transferred by him to another assignee, for the purpose of the original assignment, and certain of the creditors who signed said agreement sought to oppose the discharge of the bankrupt on the ground that he had acted in the premises with intent to evade the requirements of the statute,

*Held*, That the rules and analogies of equity jurisprudence should govern the case, and the said creditors were estopped from setting up such grounds of opposition against their declarations in the said agreement.—*In re Schuyler*, vol. 2, p. 549.

### ALIAS EXECUTION.

See EXECUTION.

#### Issue of Pending Bankruptcy Proceedings.

A bankrupt, prior to the filing of his petition and the adjudication, was arrested at St. John, New Brunswick, and gave bail to the action. Judgment was recovered against him, and a capias issued which the sheriff returned *non est inventus*. The bankrupt afterwards went to St. John, for the purpose of rendering himself in discharge of his bail. Having been subsequently adjudged a bankrupt, an alias execution was duly issued in accordance with the rule of court in New Brunswick, against him, which was lodged with the sheriff.

*Held*, That the issuing of an alias execution was not in law a new arrest during the pendency of the proceedings in bankruptcy, but only a lawful continuation of the old arrest according to the terms, and for the purpose for which it was originally made.—*In re Devoe*, vol. 2, p. 27.

### AMENDMENT.

#### ALIENS.

See ADJUDICATION,  
BANKRUPT,  
CITIZENS,  
OATH.

#### 1. May be Adjudged a Bankrupt.

An alien resident within the United States may take the benefit of the Bankrupt Law.—*Goodfellow*, vol. 3, p. 452.

#### 2. Six Months Residence in District Unnecessary.

An alien need not have resided six months within the district in which he makes the application.—*Id.*

### ALLEGATION.

#### Number and Amount of Creditors.

The absence from a creditor's petition of the allegation as to the number and amount of the creditors in the petition is not supplied by the admission of the debt or made in writing, unless the court is satisfied that the admission was made in good faith.—*In re Keeler*, vol. 10, p. 419.

### AMENDMENT.

See APPEAL,  
BANKRUPT ACT,  
COURTS,  
DEPOSITIONS,  
EXAMINATION,  
PETITION,  
PLEADING,  
RECORDS,  
SCHEDULES,  
SPECIFICATIONS.

#### AMENDMENT.

(A.) GENERALLY, p. 199.

(B.) TO ACT, pp. 199–20.

I. Of July 14, 1870, p. 199.

II. " March 3, 1873, p. 200.

III. " June 22, 1874, p. 200.

#### C, OF PLEADINGS, ETC.

I. Application for Discharge, p. 203.

II. Deposition to Act of Bankruptcy, p. 203.

III. Of Petition, p. 204.

IV. Of Petition for Review, p. 205.

V. Of Proof of Debts, p. 205.

VI. Of Record, p. 206.

VII. Of Return of Assignee, p. 206.

VIII. Of Schedules, p. 206.

IX. Specification, p. 207.

**(A.) GENERALLY****1. To be Liberally Allowed.**

There is an active duty imposed on the judge outside and beyond the action and efforts of counsel, to see that thorough justice is done to all the parties concerned—in furtherance of the purposes and policy of the Bankrupt Act.

To this end there is great latitude of amendment permitted, up to the final discharge in bankruptcy.—*In re William H. Pierson*, vol. 10, p. 193.

**2. Limited to Same Cause of Action.**

Although the court has, in furtherance of justice, the discretion at any stage of proceedings to permit amendments to be made to pleadings, it is a discretion properly limited to the same cause of action, and it should not permit, under forms of "amendments," new causes of action to be introduced.

Amendments in legal proceedings always presuppose something to amend—something in the record concerning that distinct substantive matter—not an entirely new cause of action to be substituted for the original one. Substitution is not amendment. The defendant may assent to the incorporation of new cause or acts of bankruptcy into the original petition. If consent is withheld, leave should be refused.—*In re Leonard*, vol. 4, p. 563.

**3. Not to Revive Action Barred by Limitation.**

An amendment by which the assignee in bankruptcy was made a plaintiff in a suit brought to recover certain land alleged to have been held in trust for the bankrupt, more than two years after the appointment of such assignee, does not have the effect to relate back and make him the plaintiff *ab initio*, and thereby defeat the limitation of the 2d Section of the Bankrupt Act of 1867.—*Daniel Cogdell v. William J. Exum*, vol. 10, p. 327.

**(B.) TO THE BANKRUPT ACT.****I. July 14, 1870.****4. Suspension Commercial Paper.**

The omission to pay commercial paper for fourteen days, subsequent to the amendment of July 14, 1870, is a suspension within its meaning, although the pa-

per fell due and was dishonored before its passage.—*Baldwin et al. v. Wilder et al.* vol. 6, p. 85.

**5. Idem.**

Under the thirty-ninth Section of the Bankrupt Act, as amended by the act of July 14, 1870, a person who is not a banker, broker, merchant, trader, manufacturer, or minor, is liable to be put into involuntary bankruptcy, if he has stopped or suspended, and not resumed payment of his commercial paper within a period of fourteen days.—*In re The Hercules Mutual Life Assurance Society*, vol. 6, p. 338.

**6. Extending Time of Unconditional Discharges.**

The amendments of 22d of July, 1868, and 14th of July, 1870, to the Bankrupt Act, extend the time as to the operation of the provisions of the second clause of the thirty-third Section as if the original act had in this respect been passed January 1st, 1869.—*In re J. W. Hershman*, vol. 7, p. 604.

**7. Date of Contracting Debt.**

The provision of Section thirty-three of the Bankrupt Act, as amended July 14th, 1870, providing for the discharge of the bankrupt from all debts contracted prior to the 1st day of January, 1869, construed.

A tenant, on the 1st day of May, 1868, surrendered his lease, which had another year to run, under a bargain that the landlord should rent the premises for the remainder of the term for what he might be able to get for them, and apply the rent to the credit of the tenant, and that the tenant should pay to the landlord such sum as the rent so received by him, subsequent to such surrender, should fall short of the rent reserved in the lease so surrendered, with interest on quarterly deficits from the close of each quarter respectively. At the end of the year, a considerable amount having so become due, the landlord recovered a judgment therefor. After the recovery of this judgment the bankrupt filed his petition in bankruptcy.

*Held*, That the claim was contracted prior to January 1st, 1869, to wit: on the day of surrendering the lease and enter-

ing into the contract to pay the deficiency of rent.—*In re Swift*, vol. 7, p. 591.

## II. March 3, 1873.

### 8. Is Constitutional.

The amendment of March 3d, 1873, to the Bankrupt Act, as relates to liens acquired on property previous to the passage of the increased exemption acts, on debts contracted prior to the passage of the Bankrupt Act, held constitutional. The present Bankrupt Law is not unconstitutional for want of uniformity in the exemptions allowed in different States.—*In re Jordan*, vol. 8, p. 180.

### 9.

The amendment of the Bankrupt Act of March 3d, 1873, held constitutional.

The amendment of March 3d, 1873, does not destroy the uniformity of the Bankrupt Act.—*In re Smith*, vol. 8, p. 401.

### 10.

The amendment to the Bankrupt Act of March 3d, 1873, in respect to exempt property is constitutional.—*In re Willis A. Jordan*, vol. 10, p. 427.

### 11. Constitutional as applied to Subsequent Petitions.

Amendment of March 3d, 1873, to Bankrupt Act, considered and held constitutional in cases where petition is filed after passage of act; and in such cases wherein the petition is filed before passage of the amendment to the act, where, after the passage of the amendment to the act, there remains in the hands of the court an unappropriated fund.—*In re Kean and White et al.*, vol. 8, p. 337.

### 12.

Amendatory act of March 3d, 1873, held constitutional as to all cases where petition in bankruptcy is filed after the passage of the act.—*Everett*, vol. 9, p. 90.

### 13. Unconstitutional.

The amendment of March 3d, 1873, construed, and held to only allow the exemptions granted by State laws in 1871, as against judgments of State courts when such judgments are rendered after the passage of the amendment of 1873. A construction of the amendment of 1873, as giving the exemption of 1871 against liens of force prior to the adoption of the State

laws granting the exemptions, held to be contrary to reason and justice, and the fundamental principles of the social compact. The amendment of March, 1873, so far as it is declaratory of the meaning of the act of July, 1872, held null and void.—*Dillard*, vol. 9, p. 8.

### 14. Destroys Uniformity of Act.

The amendment to the Bankrupt Act of March 3d, 1873, is unconstitutional, because it destroys the *uniformity* of the act. *In re Daniel Deckert*, vol. 10, p. 1.

## III. June 22, 1874.

Its effect on —

1st. *Adjudication.*

2d. *Discharges.*

3d. *Dividends.*

4th. *Denial.*

5th. *Petition.*

6th. *Proportion of Creditors.*

7th. *Reasonable Cause.*

8th. *Suffering Property to be Taken.*

1st. *Adjudication.*

### 15. Applies only to Causes since Dec. 1, 1873, where there has been no Adjudication.

The provisions of the amendment to the Bankrupt Law, approved June 22d, 1874, requiring one-fourth in number and one-third in amount of creditors to join in an adjudication of bankruptcy, apply only to cases commenced since December 1st, 1873, where there has been no adjudication.—*In re Frederick E. Angell*, vol. 10, p. 73.

### 16. Idem.

While the late amendment to the Bankrupt Act is retrospective in its operation, so as to bring within it all cases commenced since December 1st, 1873, and in which at the time of the passage of said amendment (June 22d, 1874), the petitions for adjudication remained to be acted on, yet it does not annul or disturb judgments rendered or adjudication made and in force at the time of the taking effect of said amendment.—*In re Obear. In re Thomas*, vol. 10, p. 151.

### 17. Idem.

The amendments to the Bankrupt Law, approved June 22d, 1874, do not apply to involuntary proceedings in which the adju-

dication had passed prior thereto; but only to all involuntary proceedings commenced after December 1st, 1873, and in which the question of bankruptcy was pending June 22d, 1874.—*Barnert, Berry, Reed & Co. v. Hightower & Butler*, vol. 10, p. 157.

**18. Idem. Congress could not Disturb.**

The provision of the Act of June 22d, 1874, amendatory of the Bankrupt Act, requiring one-fourth in number and one-third in amount of the creditors to join in a petition for an adjudication of bankruptcy, in cases commenced prior to its passage and since December 1st, 1873, does not apply to any of such cases in which there had been an adjudication prior to the date of said act.

A petition in bankruptcy is an action or suit, and an adjudication of bankruptcy thereon is a final judgment, which judgment is beyond the power of Congress to annul or set aside.—*In re C. B. Comstock & Co.*, vol. 10, p. 451.

**19. Idem.**

The judgment of adjudication based upon a petition conforming to the provisions of law in force when made, is valid, and as binding upon the debtor and his creditors as if the amended act had not been passed; the adjudication removed the case beyond legislative control.—*In re Raffauf*, vol. 10, p. 69.

**20. Idem.**

A. was adjudged a bankrupt on a creditor's petition, filed March 30th, 1870, before the passage of the amendments approved June 22d, 1874. On an application for an order permitting one-fourth in number and one-third in value of the creditors to join in the petition, in compliance with Section 39 of the Bankrupt Act,

*Held*, That the decree of adjudication having been rendered prior to the approval of the amendatory act, it stands as the decree of the court.

That it is not in the power of the legislative department of the government to so far interfere with the judicial department as to vacate the judgments and decrees of the latter.—*In re William J. Pickering*, vol. 10, p. 208.

**21. Applicable though Default suffered by Debtor Prior to Passage.**

Where a petition to have a debtor adjudged a bankrupt was returnable on June 13th, 1874, and the debtor made no appearance, the case was adjourned. On application after June 22d, 1874, for adjudication by default,

*Held*, For an adjudication after the approval of the amendatory act, the petitioner must allege and prove the facts, which by said act are made prerequisites for adjudication.—*Isaac Scull*, vol. 10, p. 166.

**22. Even where the Order for Adjudication was Directed to be Entered Prior to Passage.**

A petition was filed against H., January 17th, 1874, and on the return of the order to show cause, the debtor appeared, denied the acts of bankruptcy, and demanded a trial by the court. March 18th, 1874, a memorandum, signed by the initials of the judge, was made on the petition, directing that an order of adjudication be entered. No such order was entered prior to June 22d, 1874. On an application to sign such order, *nunc pro tunc*, as of March 18th,

*Held*, That until the entry of a formal order of adjudication, the debtor cannot be considered as having been adjudged a bankrupt, and therefore, in this case, on the 22d day of June he remained "to be adjudged a bankrupt," and on that day the court was deprived of the power to adjudge a debtor a bankrupt, on a petition filed since December 1st, 1873, except in cases where it is filed by one-fourth in number and one-third in value of the creditors.—*In re Hill*, vol. 10, p. 183.

**2d. Discharge.**

**23. Does not affect Petitions filed before Dec. 1st, 1873.**

The amendment of June 22d, 1874, is not retrospective, so as to affect discharges to be granted in cases where the adjudication in bankruptcy was had prior to December 1st, 1873.—*Francke, Jr., & Francke*, vol. 10, p. 438.

**24. Idem.**

The remedial provisions of these amendments apply to all pending or future proceedings in causes commenced since



December 1, 1873.—*Burnett v. Butler*, vol. 10, p. 157.

**25. Contra.**

The 9th Section of the Amendment applies to *all* cases pending when the act was passed.—*Griffiths*, vol. 10, p. 456.

**26. Idem.**

Bankrupts in both voluntary and involuntary cases, commenced prior to June 22d, 1874, may be discharged without reference to the amount of assets, or the number of creditors assenting, provided they comply with the law in other respects.—*Perkins*, vol. 10, p. 529.

**27. Idem.**

The 9th Section of the Act of June 22, 1874, applies to cases commenced before the act took effect and not then concluded, as well as to cases commenced after its passage.—*King*, vol. 10, p. 566.

**3d. Dividends.**

**28. Protest of Bankrupt Insufficient to Prevent.**

A bankrupt cannot, by mere protest made to the assignee, alleging want of jurisdiction in the court in a case commenced since the 1st day of December, 1873, and prior to the amendment of June 22, 1874, stop the declaring of a dividend which could be legally declared under the law prior to the amendments.—*In re H. & M. Rosenthal*, vol. 10, p. 191.

**4th. Denial**

**29. List to be Filed.**

Where an involuntary petition was filed since December 1, 1873, and the alleged bankrupt has made denial of the acts of bankruptcy, and demanded a jury trial, he will, under Section 39, as amended June 22, 1874, be required to file a list of his creditors, and the amount of their claims.—*The Warren Savings Bank v. J. K. Palmer & Co.*, vol. 10, p. 239.

**30. To be Sworn to.**

The general intent of the amended Bankrupt Act, approved June 22, 1874, would seem to indicate that the list of creditors presented by the debtor in denial that the requisite number and amount have joined in the petition should be *sworn* to by him. *In re Louis E. Steinman*, vol. 10, p. 214.

**5th. Petition.**

**31. Allegation of Proportion of Creditors.**

In all petitions pending in involuntary bankruptcy commenced since December 1, 1873, where no adjudication has been had, the petitioner must file a sworn amendment to his petition, alleging, on information and belief, that the petitioners represent one-fourth in number and one-third in amount of the creditors of the bankrupt.—*In re Joliet Iron and Steel Co.*, vol. 10, p. 60.

**32. Idem.**

By the amendment of June 22d, 1874, every petition to force a debtor in bankruptcy, filed since December 1st, 1873, is required to contain the allegation that the petitioners are one-fourth in number and one-third in value of the creditors of the debtors. This applies as well to cases pending as to those that may hereafter be brought.

This allegation may be made in the petition on information and belief.—*In re Scammon*, vol. 10, p. 67.

**33. Unnecessary where Adjudication had.**

It is not necessary to amend the petition where there has been an adjudication in bankruptcy before the amended act took effect.

The provisions of the amended act in regard to the number and amount of the petitioning creditors do not apply to such cases.—*In re Raffauf*, vol. 10, p. 69.

**6th. Proportion of Creditors**

**34. To be shown affirmatively.**

A petition in involuntary bankruptcy was filed June 4th, 1874. The order to show cause was returnable on June 13th, 1874; the debtor failed to appear, and the case was adjourned from time to time by the petitioning creditor until after the approval of the amendatory Act of June 22d, 1874, but up to that time no order of adjudication had been entered. On an application of the petitioning creditor for the entry of an order of adjudication, as on a default for want of an appearance,

*Held*, That the provision of the amendment of June 22d, 1874, requiring that in all cases commenced since December 1st,



1873, and prior to the passage of the amendment, the debtor is to be adjudged a bankrupt on the petition of one or more of his creditors, who shall constitute one-fourth at least in number of his creditors, and the aggregate of whose debts provable under the act amounts to at least one-third of the debts provable, applies to this case, and that the fact that the debtor has not appeared to make the objection, or to deny that the petitioning creditors do in fact constitute the requisite number in value and amount, makes no difference.

It is for the creditors to show affirmatively that they are a body having a right to the relief invoked.

Where petition for adjudication in involuntary bankruptcy was filed since December 1st, 1873, but prior to June 22d, 1874, the petition must contain the allegation that the petitioners represent one-fourth in number and one-third in value.—*Scull* vol. 10, p. 165.

### 35. Creditors joining cannot captionally withdraw.

Creditors who have united with the original petitioning creditor under the requirement of the recent amendment, approved June 22, 1874, cannot be allowed to withdraw from the petition, and thus break up the quorum after they have united in good faith for the purpose of having their debtor adjudged a bankrupt.—*In re P. H. Heffron*, vol. 10, p. 213.

### 36. Issue of, tried by Clerk of Court.

On an issue formed by the debtor, as provided in Section 9 of the amendment of June 22, 1874, an order of reference will be made to the clerk of the court to determine this issue on such evidence as may be introduced before him.—*In re Jacob Hymes*, vol. 10, p. 433.

#### 7th. Reasonable Cause.

### 37. Applicable only to Transfers after its Passage.

The fair intendment of the amendment of June 22, 1874, is that in cases where no other time is mentioned the amendment should only apply to cases arising after its passage.—*Hamlin v. Pettibone*, vol. 10, p. 173.

### 38. Idem.

The amendments, June 22, 1874, to Section 35 of the Bankrupt Act are not retroactive.—*Brook v. McCracken*, vol. 10, p. 461.

### 39. The Change almost purely a Verbal one.

That in almost every case where a jury would be warranted in finding that a purchaser had good reason to believe, under the old statute, they would be justified in finding that he "knew" under the amended law, so that, practically, the amendment is merely a verbal one in that respect.—*R. S. Hamlin, assignee, v. W. C. Pettibone*, vol. 10, p. 173.

### 40. Idem.

A creditor receiving payment with "cause to believe" his debtor insolvent is presumed to know that such debtor thereby intended a fraud upon the act.—*Lloyd Brooke, assignee, v. John McCracken*, vol. 10, p. 461.

#### 8th. Suffering Property to be Taken.

### 41. Not act of Bankruptcy.

Since the amendment of June 22d, 1874, it is not an act of bankruptcy for one, insolvent, to "suffer his property to be taken," etc., he must "procure," etc.—*In re Isaac Scull*, vol. 10, p. 165.

## (C.) OF PLEADINGS, ETC.

### I. Application for Discharge.

### 42. Allowed to cover Debts due as surviving Co-partner.

A discharge granted to the surviving partner of a firm on an individual petition would discharge him from his co-partnership, as well as individual liability; but the better practice would be to amend the petition so as to conform to the facts.—*In re Bidwell*, vol. 2, p. 229.

### II. Deposition to Act of Bankruptcy.

### 43. Not allowed.

The deposition of a witness to acts of bankruptcy in an involuntary proceeding cannot be amended, because it is the proof upon which the rule to show cause issues, and without which the whole proceeding is defective.—*May v. Harper & Atherton*, vol. 4, p. 478.

III. *Of Petition.*1st. *Allowed.*44. **To conform to Proof.**

Where a petition averred that acts were committed by bankrupt, in contemplation of bankruptcy and insolvency, and evidence of insolvency only was given, the petition should be amended accordingly.—*In re Joseph Haughton*, vol. 1, p. 460.

45. **Against Married Woman to charge separate Estate.**

A petition in involuntary bankruptcy was filed against alleged bankrupt, a married woman, having separate estate, grounded on the non-payment of certain promissory notes of her hand.

*Held*, That inasmuch as it did not appear on the face of the notes that it was her intention to bind her separate estate, and there being no allegation that it was given for the benefit of the separate estate, or in course of trade, petition must be dismissed, with permission to amend on payment of costs.—*In re Howland*, vol. 2, p. 357.

46. **To supplement Defective Averments.**

Where the averments of a petition are defective it may be amended, and judgment will be suspended to allow the amendment.—*In re Asa W. Craft*, vol. 1, p. 378.

47. **Idem.**

It is the duty of the court, when the acts of bankruptcy are imperfectly alleged, but clearly established by the proof, to allow such amendment of the creditor's petition as may be necessary to sustain the proceeding.

Order entered, allowing the amendment of the petition by alleging further acts of bankruptcy, and further ordering an adjudication of bankruptcy when this amendment has been made.—*In re A. B. Gallinger*, vol. 4, p. 729.

48. **To insert "Fraudulent."**

Leave granted to amend the petition by the insertion of the word "fraudulent" in the allegation as to suspension of commercial paper.—*In re Jersey City Window Glass Co.*, vol. 1, p. 426.

49. **To bring in Co-partner.**

A bankrupt may amend his petition after adjudication so as to bring in his co-partner in order to obtain a discharge of co-part-

nership as well as individual debts.—*In re Wm. H. Little*, vol. 1, p. 841.

50. **On Petition insufficiently verified.**

The court has jurisdiction when a petition is filed, notwithstanding the insufficiency of the verification, and therefore power to allow an amendment of it.—*In re Solomon Simmons*, vol. 10, p. 253.

51. **At instance of Creditor.**

A creditor, after his claim has been duly proved, has the right to ask that the petitioner amend any defect in the petition or schedule.—*In re Jones*, vol. 2, p. 59.

2d. *Not Allowed.*52. **That go to the Foundation of the Proceedings.**

An amendment going to the whole foundation of the proceedings, *nunc pro tunc*, is in violation of the 39th Section of the Bankrupt Act. But where the amendment is merely formal, and facts were alleged in the petition which were proved true, showing that the debtor was insolvent, etc., and the new amendment covered what had already substantially appeared, the debtor cannot complain of being taken by surprise, and such amendment will be allowed.—*In re Craft*, vol. 2, p. 111.

53. **Idem.**

A petition was filed against B., to have him adjudged a bankrupt, June 25th, 1874, the order to show cause being made returnable July 2d, 1874. At the hearing the debtor's attorney objected to the petition on the ground that it contained no allegation that the petitioning creditor constituted one-fourth in number and one-third in value of B.'s creditors. At the time of filing the petition, neither the creditor, his attorney, or the court, had reliable information whether the amendments to the Bankrupt Act had been approved or not.

The court held that this case did not rest with those cases provided for in the act, when the petition having been filed by one creditor, before the law took effect, and no order of adjudication passed, time is to be given for other creditors to unite in the petition; that this provision relates only to cases commenced before the amendment took effect; and as the petitioning creditor does not, in fact, constitute one-fourth in number and one-third in value of the

creditors of the alleged bankrupt, no amendment of the petition can be made. Petition dismissed.—*In re Thomas F. Burch*, vol. 10, p. 150.

#### 54. To Substitute new Acts of Bankruptcy.

The District Court has power to allow amendments in petitions, and proceedings in bankruptcy; but amendments that would introduce into the petition entirely new acts of bankruptcy will be disallowed.—*In re Frederick C. Crowley & Wm. L. Hoblitzell*, vol. 1, p. 516.

#### 55. Idem.

Although the court has, in furtherance of justice, the discretion at any stage of proceedings to permit amendments to be made to pleadings, it is a discretion properly limited to the same cause of action, and it should not permit, under forms of "amendments," new causes of action to be introduced.

Amendments in legal proceedings always presuppose something to amend—something in the record concerning that distinct substantive matter—not an entirely new cause of action to be substituted for the original one. Substitution is not amendment.—*Leonard*, vol. 4, p. 562.

### IV. Petition for Review.

#### 56. Failing to assign Error.

The neglect to assign any specific error in a petition for review is one that may be cured by amendment, and no delay should happen to the creditors through mere defect in the formal proceedings.—*Samson v. Blake et al.*, vol. 6, p. 410.

#### 57. To Notice of Appeal.

A notice of appeal does not per se bring before the Circuit Court the proceedings in the District Court, or any part of them. Query, If it is even sufficient to warrant the Circuit Court in making any order to have the proceedings in the District Court certified to the Circuit Court, possibly, where a party had honestly mistaken his remedy, and there would be otherwise a failure of justice, the Circuit Court might give sufficient effect to the notice of appeal to allow a proper petition for review to be

filed *nunc pro tunc* as an amendment thereto.—*In re Casey*, vol. 8, p. 71.

### V. Proof of Debt.

#### 58. Ignorantly omitting to claim Security.

That a creditor having security, and proving his demand in ignorance of his privilege, and omitting to mention his security, should be allowed in the absence of fraud to amend his proof.—*McConnell*, vol. 9, p. 387.

#### 59. Cautiously allowed after Dividend.

A party holding security, proved as an unsecured creditor, after receiving a dividend, moved to amend his proof, because of his ignorance of the law at the time of first proving his claim.

*Held*, That the Bankrupt Court possesses discretionary power as to allowing proofs of debt to be amended.

This power will generally be exercised in cases of mistake or ignorance, either of fact or law, in the absence of fraud, when all parties can be placed in the same position they would have been if the error had not occurred.

Where the error is tainted with fraud, however slight, and all parties cannot be placed in the same position as if the error had not occurred, the court will allow the burden to fall upon him who committed the error rather than upon the innocent.

A secured creditor may vote for assignee on so much of his debt as is unsecured, where the security applies to a specific portion of his debt.—*In re Parkes*, vol. 10, p. 82.

#### 60. Required where Deposition Erroneous.

An agent of a creditor filed and proved a claim, but not having a power of attorney to vote for assignee, sought to withdraw the proof of said claim, partly for the reason that he had not stated in his deposition that the creditor held promissory notes not yet due and had agreed to discharge the claim on their payment. Bankrupt objected.

*Held*, That neither proof of debt nor deposition could be withdrawn, but the creditor ought to be allowed and required to amend his proof.—*In re James M. Lowree*, vol. 1, p. 74.

VI. *Records.*61. **General Powers of Courts to Amend Record.**

Every court has power to alter and amend its records so as to conform to the truth during the term to which the record relates, and this court is bound to presume that the evidence offered in support of an amendment was legal and sufficient. The jurisdiction of this court is revisory, and a party cannot come here in the first instance to make his case or present any question for decision. Petition dismissed.—*Alabama & Chattanooga R. R. Co. v. Jones*, vol. 7, p. 145.

VII. *Return of Assignee.*62. **Unnecessary Except on Specific Cause.**

Where solicitor of bankrupt moved that the assignee be ordered to amend his return in a certain respect, but nothing appeared to show wherein such amendment was proper or necessary, or what interest of the bankrupt would be affected,

*Held*, The assignee is not required to make the amendment.—*In re James Kingon*, vol. 3, p. 446.

VIII. *Schedules.*63. **Failing to Set out Separate Items.**

Schedules are defective if they do not set forth the separate items of the bankrupt's personal estate and they may be remedied by amendment at the instance of the bankrupt.—*Wm. D. Hill*, vol. 1, p. 16.

64. **Register may order Ex Mero Motu.**

In the course of proceedings in the case of a voluntary bankrupt it was discovered that his schedules were incorrect and deficient, and the Register, on his own motion, ordered the same to be corrected and amended, to which the bankrupt objected.

*Held*, That such order may be so made by the Register, at any stage of the proceedings.—*In re Freeman Orne*, vol. 1, p. 79.

64. **May Allow—Original Filed with Clerk.**

The Register may allow amendments, if uncontested, to bankrupt's schedules of property and liabilities.

The originals of amendments so allowed are to be filed with the clerk.—*In re Charles A. Morford*, vol. 1, p. 211.

65. **Creditor Proving Claim may Require.**

Rights of creditors arise and accrue after proof of their claims. A creditor, after his claim has been duly proved, has the right to ask that the petitioner amend any defect in his petition or schedule.—*In re Jones*, vol. 2, p. 59.

66. **Application is Ex Parte.**

An application of a bankrupt to amend his schedules is an *ex parte* one, and the Register has power to allow him to do so.—*Watts*, vol. 2, p. 447.

67. **Idem.**

A Register has a right to allow amendments to the schedules on the *ex parte* application of the bankrupt at any time while the cause is pending before him, but it is the better practice, if there shall have been an appearance on the part of creditors, to issue an order to show cause, etc., and to require due notice of such application to be given.—*In re Heller*, vol. 5, p. 46.

68. **After Specification against Discharge.**

Bankrupt may, by order of court, amend his schedules, even after the consideration of specification in opposition to his discharge.—*Preston*, vol. 3, p. 103.

69. **Idem.**

It is the duty of the bankrupt to amend his schedules so as to make them conform to the facts, and that the filing of specifications does not deprive him of that right or release him from that duty.—*Heller*, vol. 5, p. 46.

70. **After First Meeting Discretionary.**

A bankrupt cannot amend his schedules by adding other names to the list of creditors, as of course after the warrant and after the close of the business of the first meeting.—*In re John Morganthal*, vol. 1, p. 402.

The Register may report provisionally as to the conditions on which the amendments should be allowed.—*Ib.*, vol. 1.

71. **Material Additions will require issue New Warrant.**

After the schedules are amended a new warrant should issue, to be served on the

creditors whose names have been introduced by the amendment.—*In re John S. Perry*, vol. 1, p. 220.

**72. Idem.**

Material additions to the schedules of debts or of property are not allowable by way of amendment after the first meeting of creditors, except upon such conditions as may prevent injustice. In some cases the issuing of an alias warrant will be required.—*In re Robert Ratcliffe*, vol. 1, p. 400.

**73. Does not Vacate Appointment of Assignee.**

When a bankrupt amends his schedule after an assignee has been chosen, so as to include an additional creditor for a considerable amount, it is not necessary to notify the creditors already named in such schedules before the amendment can take place, or to call a new meeting of creditors.—*In re Carson*, vol. 5, p. 290.

If the creditor, after proving his claim, wishes to have the assignee already appointed removed, he can petition to the court in accordance with Form No. 40.—*Id.*, vol. 5.

**IX. Specifications.**

**74. Allowed where too Vague.**

Specifications in opposition to the discharge of a bankrupt must be specific, but if a creditor desires to amend where they are too vague, or take further testimony in support thereof, he may do so.—*In re W. D. Hill*, vol. 1, p. 16.

**75.**

Incomplete specifications in opposition to a discharge in bankruptcy, may be amended in due course.—*McIntire*, vol. 1, p. 436.

**AMOUNT DUE.**

**On Contingent Liabilities.**

Where a contract of the bankrupt exists at the time of commencement of proceedings in bankruptcy, but the question of his liability thereon is, though contingent, then capable of determination, and the ascertainment of the amount due the debtor will be discharged therefrom under the Bankrupt Act of 1867.—*Jones & Culhum v. Knox*, vol. 8, p. 559.

**AMOUNT OF INDEBTEDNESS.**

See DEBT.

**The Amount Required by the Act, must exist at time of Adjudication.**

The District Court has no jurisdiction of an involuntary case in bankruptcy, unless it appears on the trial that the debtor, at that time, owes debts provable under the act exceeding the sum of three hundred dollars, and is indebted to the petitioning creditors in the amount of two hundred and fifty dollars. This is true even though the debtor, at the time of the filing of the petition, was indebted to exceed those sums. When his indebtedness, by subsequent payments, is reduced below those sums the court loses jurisdiction.

The receipt of payments by petitioning creditors to an amount sufficient to reduce this indebtedness below the minimum established by the act must be considered as a waiver of the alleged act of bankruptcy.

The petitioning creditors cannot add the costs paid and incurred by them to their debt in order to raise it above the jurisdictional limit. Such costs are not a part of their debt. The debtor must owe them two hundred and fifty dollars or they have no right to make costs. Nor can the creditors add counsel fees to their debt.—*Skelley*, vol. 5, p. 214.

**ANSWER.**

See DENIAL ACT,  
PLEADING.

**1. Verification Unnecessary.**

Answer need not be verified. If debtor, in cases of involuntary bankruptcy, do not appear on return-day of rule, he cannot demand a trial of issues by a jury.—*Gebhardt*, vol. 8, p. 268.

**2. Except in Court where Necessary in Common Law.**

In courts where answers are verified in common law action the answer to involuntary petitions in bankruptcy must also be verified.—*Findlay*, vol. 9, p. 83.

**3. Setting up Conditional Payment.**

The holders, respectively, of two promissory notes past due petitioned jointly to have the drawer, their debtor, adjudicated bankrupt. The defendant denied insol-

vency, and pleaded payment of said two notes by petitioners accepting certain other notes, provided they proved, on inquiry, to be collectible. Petitioners demurred to the sufficiency of the answer.

*Held*, Answer sufficient.—*Quimette*, vol. 8, p. 566.

#### 4. On Information and Belief insufficient.

An answer by a defendant, denying upon information and belief, is insufficient and evasive, and such denial does not raise an issue, and the allegations in the bill must be taken as true. A party is not permitted to deny an allegation in his adversaries' pleading upon information and belief, when, from the very nature of the charge, his knowledge, if any, must be direct and personal. All such allegations must be answered positively that the party has no knowledge, information, or belief of the facts set up in the pleading.—*Burfee v. First Nat. Bank*, vol. 9, p. 314.

### APPEAL.

See ADJUDICATION,  
ASSIGNEE,  
COURT,  
JURISDICTION,  
NOTICE,  
PETITION FOR REVIEW,  
SURETY,  
WAIVER.

### APPEAL.

- I. *The Bond*, p. 208.
- II. *Cost*, p. 208.
- III. *Generally*, p. 208.
- IV. *To Circuit Court*, p. 209.
- V. *To Supreme Court*, p. 210.

#### I. *The Bond*.

##### 1. Filing within Time is a Pre-requisite.

The requirements of the act, that the appeal shall be claimed, bond filed, and notice given within ten days after the decision, and that it be entered at the term of the Circuit Court held within the district next after the expiration of ten days, are jurisdictional facts necessary to authorize the Circuit Court to pass upon the appeal.—*Alexander*, vol. 8, p. 32.

##### 2.

Where no bond has been filed in a case of appeal, as required by Section 8 of the

United States Bankrupt Act of 1867, no appeal can be allowed after the expiration of ten days from the entry of the decree.

Where, however, the bond is proper in form, and the sureties are sufficient, the United States District Court will approve it as a bond which would be a proper one if given in time, leaving it to the appellee to move the appellate court to dismiss the appeal if such a course shall seem proper to him.—*Benjamin v. Hart*, vol. 4, p. 408.

#### II. *Cost*.

##### 3. Assignee Liability for.

In Pennsylvania an assignee in bankruptcy may appeal from an award of arbitrators without the payment of costs.—*Morse v. Gritmann*, vol. 10, p. 132.

##### 4.

An assignee in bankruptcy may appeal from an award of arbitrators under the Compulsory Arbitration Law, without the payment of costs.—*Cooke & Co.*, vol. 10, p. 126.

#### III. *Generally*.

##### 5. Prosecuted though Appellant adjudged Bankrupt.

The bankruptcy of the appellant, though adjudicated before the taking of the appeal, will not prevent its prosecution in his name, nor will the respondent be heard to object on that ground.

The appeal may be prosecuted in the name of the bankrupt or that of his assignee.—*M. J. O'Neil v. George Dougherty*, vol. 10, p. 294.

##### 6. Rule of Decision.

The power of review is given the court as a court of equity, and on appeal it is not bound to reverse on strictly legal grounds, if satisfied that the facts are correctly found and that no injustice has been done.—*Samson v. Blake et al.*, vol. 6, p. 410.

##### 7. Only from Final Decrees.

Decrees in equity, in order that they may be re-examined in the United States Circuit Court, must be final decrees rendered in term time, as contradistinguished from mere interlocutory decrees, or orders which may be entered at chambers, or if entered in court, are still subject to revision at the final hearing.—*Morgan et al. v. Thornhill et al.*, vol. 5, p. 1.



**8. Idem.**

The Circuit Court will only entertain an appeal under the 8th Section of the Act, in suits in equity, from *final decrees* and not from interlocutory orders not settling all the rights in controversy.—*Casey*, vol. 8, p. 71.

**9. Notice of.**

Where there has been a joint decree against two parties, and one alone asks for an appeal, the appeal will be dismissed unless it appears by the record that the other party had been notified in writing to appear, and that he had failed to appear, or, if appearing, had refused to join.—*Masterson v. Howard et al.*, vol. 5, p. 180.

**10. Idem—Effect of.**

A notice of appeal cannot be considered as proper process under paragraph one, Section 2, for revising summary proceedings of the District Court under Section 1.

A notice of appeal does not *per se* bring before the Circuit Court the proceedings in the District Court, or any part of them. *Query*. If it is even sufficient to warrant the Circuit Court in making any order to have the proceedings in the District Court certified to the Circuit Court.

**11. Statement.**

Where a person claiming to be a creditor of a bankrupt, after the rejection of his claim by the District Court, undertook to appeal from such decision to this court, under Section 8 of the Bankrupt Act of March 2d, 1867, but did not comply with the provision of that section in regard to entering his appeal, or with the provisions of General Order, No. 26, prescribed by the justices of the Supreme Court, in regard to filing his appeal, and setting forth a statement, in writing, of his claim, this court, on motion of assignee in bankruptcy, dismissed the attempted appeal.—*In re Columbus C. Coleman*, vol. 2, p. 671.

**12. Idem.**

In an appeal by a creditor from the District to the Circuit Court, the party appealing should, within the ten days limited therefor, file a statement in writing of his claim, setting forth the same substantially as in a declaration for the same cause of action at law, to which the assignee should plead, and the cause proceed to trial as in

actions at law, and prosecuted in the usual manner in this court, which, by Sections 24 of the Act and 25 of the General Orders in bankruptcy, such claimants are required to do.

Non-compliance with the provisions of Sections 8 and 24, and Rule 26, are grounds for dismissing an appeal to the Circuit Court.—*In re Place & Sparkman*, vol. 4, p. 541.

**13. Time for Filing.**

An appeal must be taken within ten days after the entry of the decree or decision appealed from.—*Alexander*, vol. 3, p. 32.

**14. Sunday Excluded if Last Day.**

In computing the time within which an appeal in bankruptcy must be taken, Sunday is to be counted, except that when the last day would fall on Sunday, then Sunday is to be excluded.—*York & Hoover*, vol. 4, p. 479.

**15. May be Enlarged by Agreement.**

Where a decree is entered in the District Court in favor of complainant, and respondent files notice of appeal, giving requisite bond, and citation issues within ten days, but the transmiss upon appeal not having been filed in the Circuit Court until May, 1871, after two terms had gone over, on motion to dismiss appeal because transmiss had not been filed at the next term after the appeal,

*Held*, Motion denied because time to file appeal had been enlarged by agreement of counsel, which is permissible, and therefore this case does not come within decision in *re Alexander*, 3 N. B. R. 6.—*Baldwin v. Rapplee*, vol. 5, p. 19.

**IV. To Circuit Court.****(A.) When Proper.****16. Appeals may be Taken.**

To the Circuit Court, from decisions of the District Court in three classes of cases only. First. In cases in equity decided in the District Court, between the assignee and persons claiming adverse interest. Second. Decisions rejecting wholly or in part, the claims of supposed creditors. Third. Decisions allowing such claims.—*In re Alexander*, vol. 3, pp. 30, 31.

The right of appeal can neither be en

larged nor restricted by the District or Circuit Court.—*Id.*, vol. 3, p. 32.

#### 17. *Idem.*

Appeals may be taken from the District to the Circuit Courts in all cases where the debt or damages claimed amounts to more than five hundred dollars, provided the appellant complies with the conditions specified in the 8th Section of the Act.—*Scammon, Assignee, v. Cole et al.*, vol. 5, p. 257.

#### 18. When Plenary Suits Necessary.

To foreclose mortgages where the mortgagee holds adversely to assignee, must be conducted by a suit to which all persons claiming adversely to the complainants are made parties, and where each will have the right to appeal given by the law (where the amount is sufficient), to the Supreme Court of the United States. The appeal to the Circuit Court, provided for by the 8th Section of the Bankrupt Act, are appeals in that class of cases mentioned in the third paragraph of Section 2: "Suits at law or in equity which may be brought by an assignee in bankruptcy against any person claiming an adverse interest, or by such person against such assignee, touching any property or rights of property of such bankrupt, transferable to or vested in such assignee."—*In re Casey*, vol. 8, p. 71.

#### (B.) When Improper Remedy.

#### 19. From Adjudication in Bankruptcy.

Where an appeal from an adjudication of bankruptcy was made from the District Court to the Circuit Court,

*Held*, Such appeal would not lie, and should be dismissed for want of jurisdiction.—*In re Mary O'Brien*, vol. 1, p. 176.

#### 20. To Review Question arising in progress of case.

An appeal is not the proper method to take a question arising in the progress of a case in bankruptcy into the Circuit Court; it should be by a petition addressed to the Circuit Court, stating clearly and specifically the point or question decided in the District Court; that the petitioner is aggrieved thereby, and praying the Circuit Court to review and reverse the decision of the court below.—*In re Read*, vol. 2, p. 9.

#### 21. From order of sale, encumbered property.

A holder of a second lien on encumbered realty, assets in the hands of the assignees in bankruptcy, and a tenant of the assignees, in their name and with their approval, appealed from two orders of the District Court that the property be sold, and the first lien be received in part payment. The assignees withdrew permission for their names to be used in the proceedings on the appeal; thereupon application was made by the second lien holder and the tenant, to file bill in equity praying appropriate relief.

*Held*, That the special appellate jurisdiction of the Circuit Court is limited to controversies between assignees and claimants of adverse interests, and to controversies between assignees and creditor claimants.

Appeal would not lie from the orders in question, and would not lie in any case unless made under the conditions prescribed by the 8th Section of the Bankrupt Act.—*Alexander*, vol. 3, p. 29.

#### 22. Expunging Debts.

An order was made in the District Court on the 8th of May, rejecting and expunging certain debts and proofs thereof, and awarding to the assignee costs, to be taxed against the creditors whose debts were rejected, and ordering that the assignee recover judgment against said creditors, and that he have execution against them therefor, from which the said creditors appealed.

*Held*, The order was not one from which an appeal would lie, and the appeals not having been claimed and noticed within ten days after the entry of the decision appealed from, they must be dismissed. *Kyler*, vol. 3, p. 46.

#### 23. Discharge, (Doubtful)

Whether, under the 8th Section of the Bankrupt Act, the order of the District Court discharging a bankrupt can be reviewed in the Circuit Court by appeal or writ of error.—*Ruddick v. Billings*, vol. 3, p. 61.

#### 24. Refusal to Rehear Case.

A court should not do indirectly what it has no power to do directly, therefore, when a petition has been dismissed in the United States Circuit Court, the parties

considering themselves aggrieved by such decision cannot apply to the United States District Court for a re-hearing of the original decree, that they may, on an adverse decision being re-entered, again have the right to appeal to the Circuit Court, as this would be an attempt to extend the time fixed by the statute within which an appeal can be allowed.—*In re Troy Woolen Co.*, vol. 6, p. 16.

#### 25. To review Summary Proceedings.

An assignee obtained an order of the District Court, requiring the bankrupt and certain other parties to deliver to him property belonging to said bankrupt. From this order an appeal was taken to the United States Circuit Court, in form and manner prescribed by the 8th Section of the Bankrupt Act. The assignee moved to dismiss the appeal on the ground that the proceedings in the District Court were summary, and could only be reviewed by summary petition, and, therefore, not a case for an appeal under the 8th Section of the Bankrupt Act.

*Held*, That although the appeal might be irregular, the District Court had jurisdiction, and from the evidence was justified in making the decree appealed from. Decree affirmed with costs.—*Samson, Assignee, v. Blake et al.*, vol. 6, p. 401.

#### V. To Supreme Court.

##### (A.) When Allowed.

#### 26. To require Circuit Court to exercise its Jurisdiction.

Where the Circuit Court merely refuses to entertain a bill to review proceedings in the District Court, it will be presumed that this refusal was based upon want of merits in the bill, and from this decision no appeal lies to the Supreme Court. But where the Circuit Court places its decision dismissing the bill on want of jurisdiction to entertain it, from this decision an appeal will lie to the Supreme Court, not to pass upon the merits of the bill, but to enable the complainants to have a hearing before the Circuit Court, if they be thereto entitled.—*The First National Bank of Troy v. Cooper et al.*, vol. 9, p. 529.

#### 27. Original Cases in Circuit Court or decided there on Appeal or Writ of Error.

The Supreme Court has no appellate jurisdiction of decisions of the Circuit Court exercised in supervising the summary proceedings of the District Court, but only of the decisions of the Circuit Court in cases brought there originally, and by writ of error or appeal, from the District Court.—*Marshall v. Knox et al., Assignee*, vol. 8, p. 97.

##### (B.) Not Allowed.

#### 28. From Bill for Review.

If a petition to the Circuit Court, to re-examine a decree of the District Court in bankruptcy, pray the court to "review" and reverse that decree, and "to grant such further order and relief as may seem just," the jurisdiction invoked must be regarded as the supervisory jurisdiction which is allowed to Circuit Courts acting as Courts of Equity, by the 2d Section of the Bankruptcy Act. From the action of the Circuit Court, in the exercise of such jurisdiction, no appeal lies to this court.—*Mead v. Thompson*, vol. 8, p. 529.

#### 29. Decisions in Exercise of Supervisory Jurisdiction.

The Supreme Court has not appellate jurisdiction of decisions rendered by the Circuit Courts in the exercise of the supervisory jurisdiction given them by the Bankrupt Law, over decisions of the District Courts in proceedings in bankruptcy.—*Hall v. Allen*, vol. 9, p. 6.

##### (C.) Effect of Allowance.

#### 30. Stays Proceedings below.

Where a party appeals from the decision of the United States Circuit Court to the United States Supreme Court, the allowance of the appeal is to relate back to the time when the original application was made for an appeal to the judge of the Circuit Court, and entitles a party to a stay of proceedings. Decreed that all orders in the case made by the Circuit or District Courts since the date of the injunction granted by the Circuit Judge, be vacated and annulled, and it is ordered that all things be restored to the condition in

which they stood at the date of said injunction.—*Thornhill et al., and Williams v. Bank of Louisiana*, vol. 5, p. 877.

### APPEARANCE.

See ATTORNEY AND COUNSEL,  
COST AND FEES,  
SERVICE OF PAPERS.

#### 1. At Meeting of Creditors.

A holder of a mortgage on real estate of the bankrupt, being named as a creditor in bankrupt's schedules, sought through his lawyer to file a protest against being so named at the first meeting of creditors. Bankrupt objected because the paper was not signed.

*Held*, That inasmuch as the creditor did not appear in person or by duly constituted attorney, and had proved no debt, the protest could not be placed on file.—*In re Eliza Altenhain*, vol. 1, p. 85.

#### 2. By Counsel in Legal Proceedings.

Upon the hearing of a petition for review on behalf of a corporation, the authority of its counsel was denied. The professional statement of counsel as to their authority must be taken as conclusive evidence of the fact asserted, unless proof to the contrary is made. No such proof being offered, their appearance is allowed. Objection was also raised to the service of the petition of review upon the attorneys for the petitioner in the preceding proceedings, for the reason that, upon the adjudication of the corporation, their relation of attorney ceased as to petitioning creditors.

The service on the attorneys being sufficient, because reasonable notice to counsel is sufficient, and they are still the counsel for petitioning creditor, as bankruptcy proceedings are a single statutory case from the filing of the petition to the discharge of the bankrupt. And appearance cures defective service.—*Ala. and Chat. R. Co. v. Jones*, vol. 5, p. 98.

#### 3. Confirmation of Unauthorized.

Where a person not authorized appears as an attorney for an individual or corporation, in answer to a rule to show cause, and waives important rights of the alleged bankrupt, as admitting the allegations of

the petition, the proceedings in bankruptcy may be set aside upon the application of such alleged bankrupt. But this motion must be made within a reasonable time after notice thereof, or it will be held waived, and the authority of the attorney, by such silence, ratified.

Where stockholders of an insolvent insurance company, under the above circumstances, wait six months—until several hundred thousand dollars of assets have been collected and is ready for distribution—and they are themselves sued for their *pro rata* of unpaid stock,

*Held*, That they have been guilty of laches and will not be heard.—*Republic Ins. Co.*, vol. 8, p. 317.

#### 4. Withdrawal of.

A party having once regularly appeared by attorney, cannot withdraw such appearance unless by the consent of the court or of the prosecuting party.—*Ulrich*, vol. 3, p. 133.

#### 5. In Opposition to Discharge.

An appearance for a creditor in opposition to the discharge of a bankrupt, entered on an adjourned day of the hearing on the order to show cause, after several adjournments have been had, is not too late.

An appearance is sufficient if entered on the clerk's docket on that day, but, under General Order 24, written specifications must be filed within ten days thereafter, to entitle such creditor to be heard.—*In re James M. Seabury, Jr.*, vol. 10, p. 90.

#### 6. Idem. Insufficient.

A firm, M., W., R. & Co., duly appointed B. & C. their attorneys, and proved debt in bankruptcy. Thereafter S. & H., a law firm, duly entered an appearance for W., R. & Co., creditors, and filed specifications in opposition to bankrupt's discharge, signed (in the handwriting of S.) B. & C., S. & H., attorneys for the opposing creditors. W. R. & Co. had proved no debt.

*Held*, The objecting creditors had no status on which to oppose discharge. S. & H. had no power to act for M., W., R. & Co., and the firm of W., R., & Co. had proved no debt.—*In re Charles N. Palmer*, vol. 3, p. 301.

**APPLICATION FOR DISCHARGE.**

See DISCHARGE.

**1. Not before Six Months if Debts Proved.**

Where debts are proved and there are assets, application for discharge cannot be filed before the expiration of six months from the issue of the warrant of adjudication.—*In re Simon Bodenheim and Jacob Adler*, vol. 2, p. 419.

**2. Nor after One Year.**

A bankrupt must make application for his discharge within one year from the date of adjudication in bankruptcy.—*In re Wil-mot*, vol. 2, p. 214.

**3. Idem.**

Where a bankrupt had failed to apply for a discharge until the expiration of a year from the adjudication in bankruptcy, a discharge must be refused.—*In re Thompson Greenfield*, vol. 2, p. 298.

**4. Contra—Only in Case where no As-sets.**

Under Sec. 29, it is only in cases where the bankrupt can apply for his discharge within less than six months from his adjudication, that he must do so within a year therefrom, in order to obtain a discharge.—*In re Thompson Greenfield*, vol. 2, p. 311.

**5. Discretionary with Court to Grant, when made after one year.**

When application is made by a bankrupt for his discharge, after the expiration of a year from the adjudication of bankruptcy, it is discretionary with the court to grant or withhold the discharge according to the circumstances of each case. The discharge after the year not to be granted as a matter of course; but the bankrupt may be permitted, by affidavit, petition, or otherwise, to explain in writing the causes of the delay.—*In re Benjamin F. Canaday*, vol. 3, p. 11

**APPORTIONMENT.**

**On Continuous Contract.**

When the bankrupt under a general contract has rendered partial service, but has not completed the contract prior to the filing of the petition, but subsequently fulfils the same, unless the contract for payment was contingent upon full per-

formance of the services, the compensation will be apportioned between the assignee and the bankrupt, in proportion to the value of the services rendered before and after the bankruptcy.—*In re Jones*, vol. 4, p. 347.

**APPROPRIATION OF PAYMENTS,**

See MUTUAL DEBTS,  
PAYMENTS,  
PREFERENCE,  
SECURED CREDITOR.

**1. Mutual Credit.**

A, before insolvency, and not in contemplation of bankruptcy, indebted to B in the sum of two thousand four hundred and eleven dollars, sold to him an estate to the value of ten thousand dollars, and credited him on his books for the said sum of two thousand four hundred and eleven dollars, at the time of sale. Afterwards A, when insolvent and in contemplation of bankruptcy, had a settlement with agent of B, when the sum of two thousand four hundred and eleven dollars was deducted from the amount of purchase-money.

*Held*, That the payment was really made at the time of sale; that it was not an appropriation of payments, and that it was a legitimate transaction, and not a fraudulent preference, within the meaning of the Bankrupt Act.—*Rosenfield, Jr.*, vol. 2, p. 117.

**2. By Operation of Law.**

Where money is paid upon a running account, and there has been no appropriation of the payments, either by the debtor or creditor, the law will apply it first on the oldest debts.—*Cook v. Waters, Whipple, et al.*, vol. 9, p. 155.

**ARRANGEMENT.**

See COMPOSITION.

**1. Are "Proceedings in Bankruptcy."**

Although the winding up and settlement of the estate are to be deemed proceedings in bankruptcy under the 43d Section of the Bankrupt Act, which contemplates the superseding of proceedings under the act, and in given contingencies the "resumption" of such proceedings, yet it is evident that the true meaning is the substitution



of the modes prescribed in this section for the ordinary modes. Such proceedings are none the less "proceedings in bankruptcy" under the act, because they are special in their nature. Either *modes* can be adopted, the ordinary one or this special one. The trustees, under direction of the committee, can wind up the estate just as the bankrupt could have done, or they may be restricted to the more limited powers and duties of ordinary assignees.—*In re Darby*, vol. 4, p. 309.

## 2. Suspends all Ordinary Proceedings.

Pending proceedings under it, the 43d Section of the Bankrupt Act suspends and supersedes all the ordinary processes and proceedings under the act, excepting so far as they are retained by the express terms or necessary implication of the provisions of that section, consequently a creditor cannot prove his debt presented after the institution of proceedings under it.—*In re Trowbridge*, vol. 9, p. 274.

## 3. Does not Prevent Examination of Bankrupt.

A creditor may be entitled to an order for the examination of a bankrupt, under the 26th Section of the Bankrupt Act, notwithstanding the election of a trustee and committee of creditors, under the 43d Section of said act.—*In re Jay Cooks & Co.*, vol. 10, p. 126.

## 4. Subsequent to First Meeting.

After an assignee has been appointed, at a subsequent meeting of creditors, they may make an arrangement by trust deed to have assignee removed and a trustee appointed in his stead.—*In re Jones*, vol. 2, p. 59.

## 5. Committee of Creditors.

It is a substantial objection to the approval of a resolution of creditors, under Section 43 of the Act, appointing a trustee and committee to supervise his action, that the committee is composed of only two, of which one is the trustee.—*In re Stillwell*, vol. 2, p. 526.

## 6. Compensation of Committee.

The committee of creditors provided for in the 43d Section of the Bankrupt Act are entitled to compensation for their services, although the statute is silent on the subject; it should, however, be limited to

such an amount as will afford a reasonable compensation for the services required and rendered.—*In re Treat*, vol. 10, p. 310.

## As to Particular Debts.

## 7. Unauthorized.

Where counsel representing creditors at the first meeting of creditors offered a resolution, that the court be requested to make an order authorizing the assignee to compromise and compound certain debts due the bankrupt's estate, by and with the consent of a committee of three creditors therein named, which resolution was voted for by all save two creditors,

*Held*, That the said order is not warranted by any provision of the act, or by General Order 17.—*Dibbles*, vol. 3, p. 72.

## With Petitioning Creditors.

## 8. After Adjudication.

After an adjudication has been made it is too late to make a motion to dismiss the proceedings and settle with the debtor. If, however, the parties desire to make a settlement they may proceed under Section 43 of the Bankrupt Act, and have the estate wound up by trustees.—*In re Sherburne*, vol. 1, p. 558.

## 9. Before.

A creditor whose debt has been settled before the return day of the order to show cause, moved on that day to dismiss the proceedings. Application refused.—*In re Mendenhall*, vol. 9, p. 380.

## ARREST.

See ACTS OF BANKRUPTCY,  
EXAMINATION,  
MARSHAL,  
WARRANT

## ARREST.

- (A.) *Cannot be Arrested*, p. 214
- (B.) *May be Arrested*, p. 215.
- (C.) *Arrest prior to Adjudication*, p. 216.
- (D.) *As an Act of Bankruptcy*, p. 217.
- (E.) *Probable Cause*, p. 217.
- (F.) *Miscellaneous*, p. 217.

## (A.) Cannot be Arrested.

## 1. Pending Levy on Personal Property.

Aside from the provisions of the Bankrupt Act, a warrant of arrest under the act of 1842 is irregular and cannot be enforced where there is a pending levy on



defendant's personal property by virtue of a *fi. fa.* in the sheriff's hands.—*Commonwealth v. O'Hara*, vol. 1, p. 86.

## 2. Attending Court.

While on his way to be examined as a witness under an order of the Register, bankrupt was arrested on *meane* process issued by a State court,

*Held*, That the arrest was a violation of his privileges, and that he was entitled to be discharged.—*In re George W. Kimball*, vol. 1, p. 193.

## 3. Under Stillwell Act.

The bankrupt cannot be arrested in proceedings, under the act of 1831, of this State, known as the "Stillwell Act," by a creditor seeking to reach the property of the bankrupt.

The primary object of civil proceedings, under the Stillwell Act, is not the punishment of the debtor; but the collection of the creditor's judgment; and, therefore, such proceedings are in direct conflict with the Bankrupt Law, as respects all property which has passed to the assignee in bankruptcy.—*Goodwin v. Sharkey*, vol. 3, p. 558.

## 4. Failing to Account where Credit is Given.

Decisions under the Bankrupt Act of 1841, considered and approved.—*In re Kimball*, disapproved.

It seems, that where an agent is to account monthly with his principal, a court might infer that the agent was allowed to mingle the money collected with his other funds, and to consider himself an absolute debtor for that amount; and, if authority so to do may be implied from the course of dealing, the agent would be exempted from liability for a conversion of the money.—*Grover & Baker v. Clinton*, vol. 8, p. 312.

## 5. On Judgment for Costs.

A bankrupt cannot be held in the custody of the sheriff of the county on account of a judgment obtained against him for costs in an action in a State court.—*In re Borst*, vol. 2, p. 171.

## 6. Where Claims dischargeable in Bankruptcy.

The bankrupt was held in custody by the sheriff of the city and county of New York,

under three several orders of arrest. Four actions were pending against bankrupt in State courts.

*Held*, That proceedings will be stayed, and the bankrupt will be discharged from arrest in proper cases, until the question of his discharge in bankruptcy shall be passed on in the bankruptcy court. Testimony ordered to be taken and certified by a referee as to whether the actions were for claims that would not be discharged in bankruptcy.—*In re Henry Jacoby*, vol. 1, p. 118.

## 7. Idem.

A United States district court has power to relieve a bankrupt from arrest, on process of a State court, in an action founded upon a debt that may be discharged in bankruptcy. The question whether the debt be one contracted in fraud, may be examined into and determined by the district court.—*In re Louis Glaser*, vol. 1, p. 336.

## 8. Idem.

A bankrupt is not liable to arrest, pending proceedings in bankruptcy, upon a claim that would be discharged by an adjudication of bankruptcy.—*In re Kimball*, vol. 2, p. 204.

## (B.) May be Arrested.

## 9. Where Debt not affected by Discharge.

A debt created by fraud, in which judgment has been recovered, is not affected by a discharge in bankruptcy; hence the sheriff will not be enjoined from an arrest of the bankrupt in an execution issued on such judgment.—*In re Charles G. Patterson*, vol. 1, p. 307.

## 10. Fiduciary Debt.

Where bankrupt had flour consigned to him on commission, to sell the flour and remit the proceeds, less the commission, and he converted the proceeds to his own use,

*Held*, On a motion to discharge him from arrest upon the debt, that the same was incurred while the bankrupt acted in a fiduciary capacity, and discharge refused.—*In re Kimball*, vol. 2, 354.

## 11. In Actions for Deceit.

A bankrupt arrested on an execution issued on a judgment in an action for deceit, is not entitled to be relieved from the arrest pending the proceedings in bank-

ruptcy.—*C. H. Whitehouse, Petitioner for Habeas Corpus*, vol. 4, p. 68.

## 12. Idem.

Where a bankrupt is held under arrest upon State process in an action of tort, in the nature of the deceit, it being alleged in the declaration that he obtained possession of the plaintiff's goods under color of a contract, by means of false and fraudulent representations, the United States district court has no power to discharge the bankrupt upon a petition for a writ of *habeas corpus*.—*Devoe*, vol. 2, p. 27.

### (C.) Arrest prior to Adjudication.

## 13. Cannot be Released.

A bankrupt arrested and imprisoned before the proceedings in bankruptcy have commenced cannot be released by the court upon a petition for a writ of *habeas corpus*.—*In re William A. Walker*, vol. 1, p. 318.

## 14. Idem.

The bankrupt law does not relieve the bankrupt from an arrest existing at the date of adjudication.—*Hazelton*, vol. 2, p. 31.

## 15. Not even if Creditor proves his Debt.

A judgment creditor proved the debt in bankruptcy, which was known by the record of proceedings in the State courts to have been created in fraud. The District Court refused to discharge the bankrupt from arrest and bail, and refused to direct satisfaction of the judgment. Petition to have decision of the District Court reviewed, denied with costs.—*In re Robinson*, vol. 2, p. 342.

## 16. But Proceedings may be Stayed.

After a bankrupt had filed his petition in bankruptcy he was arrested under an order of a Probate Court, on an action to recover a debt that was shown, by affidavits, to have been fraudulently contracted. While he was under arrest, an order was obtained from the Bankruptcy Court staying proceedings in the action in which he was arrested. The plaintiff in the action moved to set aside the stay, although they had not proved their debt before the Register.

*Held*, That their debt was one which could not be discharged by a discharge in bankruptcy, nevertheless it was provable under the 19th Section of the Bankrupt Act.—*In re James*, vol. 2, p. 226.

## 17. Idem.

The Bankrupt having been arrested by order of a State court at the suit of creditors whose debt appeared by the order to have been fraudulently contracted, applied to have said order of arrest vacated by the Bankruptcy Court, and the said creditors, who had subsequently proved the debt in bankruptcy, enjoined from further proceedings thereon.

*Held*, That such debt was one not dischargeable in bankruptcy, and the order of the State court could not be vacated or its proceedings set aside. But that the debt being provable in bankruptcy, proceedings of the creditors in their suit in the State court would be stayed until the determination of the bankruptcy on the question of discharge.—*In re Migel*, vol. 2, p. 481.

## 18. Proceedings not Stayed under Insolvent Law of Massachusetts.

A creditor recovered judgment and execution against a bankrupt in the State court. The bankrupt was subsequently arrested on the execution, and gave a recognizance before a magistrate to appear for examination under the laws of the State, for the relief of poor debtors. He appeared, and the examination was continued from time to time. The bankrupt, pending the examination, filed his petition in bankruptcy; an assignee was afterwards chosen. The creditor afterwards filed with the magistrate charges of fraud against the bankrupt, under the statute of the State.

*Held*, That such charges of fraud filed with the magistrate by the judgment-creditor, are not a new suit which should be stayed under the 21st Section of the Bankrupt Act, and that the bankrupt was not entitled to a discharge from arrest.—*Minon v. Van Nostrand et al.*, vol. 4, p. 108.

## 19. Alias Execution not new Arrest.

A bankrupt, prior to the filing of his petition and the adjudication, was arrested at St. John, New Brunswick, and gave bail to the action. Judgment was recovered against him, and a *capias* issued which the sheriff returned *non est inventus*. The bankrupt afterwards went to St. John for the purpose of rendering himself in discharge of his bail. Having been subsequently adjudged a bankrupt, an *alias* execution was duly issued, in accordance with

the rule of court in New Brunswick, against him, which was lodged with the sheriff.

*Held*, That the issuing of an *alias* execution was not in law a new arrest during the pendency of the proceedings in bankruptcy, but only a lawful continuation of the old arrest according to the terms and for the purpose for which it was originally made.—*In re Hasleton*, vol. 2, p. 81.

(D.) *As an Act of Bankruptcy.*

**20. When Released on Bail.**

A debtor having property in New York, was arrested on mesne process of State court upon a debt of over one hundred dollars, founded on contract, and was released from close custody, on bail, but process was not discharged within seven days.

*Held*, Said debtor had not in respect of the premises committed an act of bankruptcy under the provisions of Section 39 of the Bankruptcy Act, he not having been actually imprisoned for more than seven days on said order of arrest.—*Davis*, vol. 3, p. 339.

**21. Submitting to Illegal.**

A was arrested on mesne process issued out of a State court, and actually imprisoned thereon for a period exceeding seven days. The judge of the State court, before whom the matter was afterward brought, decided that the order by the commissioner on which A was imprisoned was improvidently made, and ordered A's release on entering common bail, or an appearance to the action. After A had remained imprisoned more than seven days, and before the judge decided the order to have been improperly granted, a petition in bankruptcy was filed against A.

*Held*, That the imprisonment being submitted to for more than seven days before an effort at liberation was made, became an act of bankruptcy.—*In re Coln*, vol. 7, p. 81.

(E.) *Probable Cause.*

**22. Obtaining Goods within Three Months.**

A was arrested on charge of fraud in procuring goods in violation of Section 44 of the Bankrupt Law. On a hearing before a United States Commissioner, it was

shown that the accused was a keeper of a small store, without means or reputation as a merchant, who had succeeded by skillful representations in buying a large amount of goods, most of which were disposed of in less than a month's time, so that when the United States Marshal took possession of the store, but a small portion of the goods could be found. No books of account or other evidence showing to whom these goods were sold, or in whose hands placed, were found. The accused remained silent and explained nothing.

*Held*, That probable cause was shown to justify the belief that the accused had committed the crime charged. Accused committed to await the action of the grand jury.—*United States v. Thomas*, vol. 7, p. 188

(F.) *Miscellaneous.*

**23. Examination as to Character of Debt.**

Evidence cannot be received to contradict the declaration and to show that no such cause of action really exists as is therein set forth.—*In re Devoe*, vol. 2, p. 27.

**24. Exemption from Arrest.**

A bankrupt, during the pendency of bankruptcy proceedings, is not absolutely exempt from arrest.—*Pettis*, vol. 2, p. 44.

ASSENT.

See DISCHARGE.

**1. Of what Creditors Necessary.**

Creditors of a certain class, who have proved their claims in bankruptcy, when the estate does not produce fifty per cent. of the proven claims, must file their assent to the bankrupt's discharge within a limited time before the hearing of the specifications filed against the discharge of the bankrupt, in order that he may be discharged from debts contracted since January, 1869.

No assent of any class of creditors is necessary to discharge the bankrupt from debts contracted before January 1st, 1869.

The only class of creditors who can oppose the discharge of a bankrupt, or withhold their assent, on the ground that fifty

per centum has not been realized, are those whose debts were contracted since January 1st, 1869.

Where there is a majority in number of these creditors, and the amounts of their debts, filing assent to the discharge, *this* is all the assent of creditors required under the act to be given as a condition precedent to the discharge of the bankrupt, when fifty per cent. is not realized.

Where the record does not disclose that there is the requisite number of the proper class of creditors filing assent to discharge, but that issue is made in the specification against discharge, it is not too late on a hearing of the specifications to prove the fact in issue, viz., the existence of the proper number of the right class of creditors filing assent.—*William W. Pierson*, vol. 10, p. 193.

## 2. Procuring.

A promise to pay a debt due by an applicant to be declared a bankrupt, in consideration that the payee will withdraw his objections in the Bankruptcy Court to the discharge of the bankrupt, is illegal and void, and no action can be sustained on such promise.—*James M. Austin v. William Markham*, vol. 10, p. 548.

## 3. Withdrawing.

When a creditor has once given his assent in writing, and the bankrupt has acted upon it, and other creditors have given theirs, and presumptively been influenced by each other's action in this respect, and the assent of the requisite number is obtained and filed, a creditor has no absolute right on the day fixed for the hearing to withdraw and cancel this assent.—*Brent*, vol. 8, p. 444.

## ASSESSMENT ON STOCK.

### 1. Not Avoidable for Deceit in Purchase.

That it is too late for a stockholder, after the company has become insolvent, to avoid his liability on the ground that false representations were made to him that no assessment could be made on his stock.—*Upton v. Hanbrough*, vol. 10, p. 368.

### 2. Assignee may make by Order of Court.

The assignee in bankruptcy has all the authority of a receiver to collect demands

## ASSETS.

and pay debts, and, under the order of the court appointing him, an assessment may be made on the unpaid shares just as if the same had been ordered by the corporation before bankruptcy.—*Nathaniel Myers, Assignee of St. Louis Soap Company, v. F. A. Seeley et al.*, vol. 10, p. 411.

## ASSETS.

See AMENDMENT,  
ASSIGNEE,  
APPLICATION FOR DIS-  
CHARGE,  
CORPORATION,  
DISTRIBUTION,  
DIVIDEND,  
DISCHARGE,  
JURISDICTION,  
PARTNERSHIP.

## ASSETS.

- (A.) *What is Included*, p. 218.
- (B.) *What is not Included*, p. 219.
- (C.) *"No Assets,"* p. 219.
- (D.) *Vesting in Assignee*, p. 226.
- (E.) *Custody of*, p. 220.
- (F.) *Insolvency*, p. 220.
- (G.) *Fifty per Cent.*, p. 220.
- (H.) *Equitable*, p. 221.
- (I.) *Incumbered Property*, p. 221.
- (K.) *Information Regarding*, p. 221.
- (L.) *Following*, p. 221.
- (M.) *Partnership Assets*, p. 222.

### (A.) *What is Included.*

#### 1. Unliquidated Damages.

Creditors filed proof of debts on an account current. Bankrupt objected, and moved to strike out all over a specific sum set out in his schedules as due the creditor, claiming that the account current was offset by claim against creditors for damages on breach of contract.

*Held*, That the claim for unliquidated damages by way of set-off should be properly included in the schedule of bankrupt's assets, and should be wholly disregarded in the proceedings for choosing an assignee.—*In re Freeman Orne*, vol. 1, p. 57.

#### 2. Property Acquired in Gaming.

Property acquired in gaming is assets, which, if the bankrupt spends in gaming,

he loses his discharge.—*In re Marshall*, vol. 4, p. 106.

### 3. Right of Reduction to Possession of Wife's Choses in Action.

In May, 1868, a *feme sole*, being the owner, in her own right, of a chose in action, marries, and a suit is instituted shortly thereafter to recover from the debtor in the name of the husband and wife. The suit continues pending until 1868, when the husband, upon his own petition, was declared a bankrupt, and an assignee was appointed and an assignment executed in the usual form. Thereafter the assignee was, upon his own motion, by order of the court, made party plaintiff with the wife, and a judgment was recovered in favor of the plaintiffs.

*Held*, That the assignee may proceed to enforce the payment of such judgment by execution, and receive the money when collected—if this be done in the lifetime of the husband and wife—and if collected by him must distribute the same to creditors as the law directs. The assignee is deprived of no right because the bankrupt has failed to schedule such choses in action, nor by the provisions of the Constitution in North Carolina, adopted in 1868.—*In re William Boyd*, vol. 5, p. 199.

### 4. Specific Chattels Bargained for.

The assignee in bankruptcy is entitled to specific property for which the bankrupt had made an agreement for the purchase.—*In re Wood Machine Co.*, vol. 9, p. 395.

### 5. Remainder under Will.

A father, resident of Georgia, bequeathed lands therein to the husband of his daughter, in trust, "for her sole and separate use, during her natural life, and the use of her children," with limitation over on her death to her then husband and children living, share and share alike, with a clause that no part of the property should be liable for the debts of any present or future husband. The wife having died and the husband become bankrupt,

*Held*, He took, under the laws of Georgia, on her death, a fourth interest in fee in the said lands.

The clause against the use of any part of the lands in payment of debts of husband, applied during the life of the wife

only, and does not apply after the fee vested in the husband.—*Myrock*, vol. 8, p. 154.

### (B.) What is not Included.

### 6. Personal Earnings when Contingent.

Where a bankrupt has charge of, and conducts in his own name, the business of another, taking half of the net profits as his compensation therefor,

*Held*, That the right to his share of the net profits is not property to be reported as assets, and that there was no ground for refusing a discharge.—*In re Alfred Beardsley*, vol. 1, p. 457.

### 7. An Equity in Lands Sold under Execution.

Where the husband's equitable interest in the estate or property of the wife has been levied upon and sold under execution, the husband has no longer any interest or estate to be returned in his schedules; and he cannot be charged with swearing falsely in stating that he has no interest or estate in such property.—*In re Hummitch*, vol. 2, p. 12.

### 8. Idem.

Where all of a bankrupt's right and title to property has been sold by creditors under judgment and execution, and purchased by his wife with her own separate funds, he has no title or estate in such property which he could be required to report in his schedules, and, hence, its omission cannot subject him to the penalties for false swearing.—*In re Pomeroy*, vol. 2, p. 14.

### 9. Suit for Fraudulent Acts.

A suit brought for fraudulently recommending a person as worthy of trust and confidence, is not a claim within the 14th Section of the act which passes as assets to the assignee.—*In re Crockett et al.*, vol. 2, p. 208.

### (C.) No Assets.

### 10. Certificate of.

When the application for a discharge is made after sixty days and within six months after adjudication, it is sufficient for the bankrupt to state, in Form 51, that no debts have been proved, or that no assets have come to the assignee, to obtain order to show cause why the discharge should not be granted. Upon the return of such order the court will grant discharge



only on satisfactory evidence of no debts proved and no assets come to the assignee, which evidence will be the return of the assignee.—*In re Bellamy*, vol. 1, p. 64.

#### 11. Determinable when Application made.

Where, at the time of the application for a discharge, the assignee has neither received nor paid any moneys on account of the estate, the case is to be regarded as one in which no assets have come into his hands.—*In re Oliver W. Dodge*, vol. 1, p. 435.

#### 12. Provision 29th Section Disjunctive.

Bankrupt may apply for a discharge within sixty days after adjudication in bankruptcy, where debts have been proved but no assets have come to the hands of the assignee.—*In re B. W. & J. H. Woolum*, vol. 1, p. 496.

#### (D.) Vesting in Assignee.

#### 13. Commencement of Proceedings.

Only such property as the bankrupt had at the time of the commencement of proceedings in bankruptcy passed to and vested in the assignee.—*Chas. G. Patterson*, vol. 1, p. 125.

#### (E.) Custody of.

#### 14. Bankrupt Court exclusive.

It is the intent of the Bankrupt Act of 1867, that the Federal tribunals shall have exclusive control of the assets of the bankrupt, and shall distribute the proceeds among his creditors.—*John Wilson v. M. Capuro and G. Capuro*, vol. 4, p. 714.

#### 15. Idem.

No power exists to wrest from the jurisdiction of the courts in bankruptcy the assets of such bankrupt individuals and corporations as are within the scope of the provisions of the United States Bankrupt Act.—*In re Independent Ins. Co.*, vol. 6, p. 260.

#### (F.) Insolvency.

#### 16. Relative to Debts.

Although the assets of a debtor may be rightly estimated at four times the amount of his debts, yet he is insolvent if unable to meet his engagements as they accrue and become due.—*T. Woods*, vol. 7, p. 126

#### (G.) Fifty per Cent.

#### 17. Gross Assets.

The term assets, in the 33d Section of the Bankrupt Act as amended July 14, 1870, is not used to express the net balance to be distributed among the creditors, but means the entire estate of the bankrupt, irrespective of the use to which it may be appropriated by the court. Hence, where the estate was originally sufficient to pay fifty per cent. of the debts proved, but a large part has been wasted by litigation, the bankrupt is entitled to his discharge without the assent of his creditors.—*In re Kahley et al.*, vol. 6, p. 189.

#### 18. Contra—net balance.

Bankrupts made application for their discharge and took the testimony of the assignee, who swore that at the time he took possession of the estate it was worth fourteen thousand dollars, which was more than fifty per cent. of the debts of said bankrupts, as set forth in their schedule. The assignee collected some twelve thousand two hundred dollars. Unsecured claims to amount of fourteen thousand dollars have been proved, of which six thousand five hundred dollars were contracted prior to January 1st, 1869, and seven thousand five hundred dollars subsequent to that date. On the part of the bankrupts it was claimed that a discharge should be granted from all their debts, for the reason that they had shown that, at the time their estate passed into the hands of the assignee, it was worth fifty per cent. of the claims proved.

*Held*, That the word assets must be construed to mean money received by the assignee, and that bankrupts are only entitled to receive a discharge from their debts contracted prior to January 1st, 1869.—*In re G. & J. J. Van Riper*, vol. 6, p. 573.

#### 19.

Section 33 should be construed, in relation to the word "assets," as if it read, "The proceeds of the bankrupt's property in the hands of the assignee, and subject to be divided among his creditors, must be equal to fifty per cent. of claims," etc.—*In re John Freiderick*, vol. 3, p. 465.



**20. Appraisement of.**

Where a voluntary bankrupt, after January 1, 1869, applied to the court upon his petition and schedule, before the day of first meeting of creditors, to have his assets appraised and determined as being in excess of fifty per cent. of provable claims, etc.,

*Held*, The application must be denied, no debts appearing to have been proved, and no present action of the kind asked could affect the question of the bankrupt's discharge. — *John Freiderick*, vol. 3, p. 465.

(H.) *Equitable, Power over.*

**21. Unpaid Subscriptions.**

That this court, after the commencement of the proceedings in bankruptcy, became vested with all the powers and control over the assets that were previously vested in either the chartered officers of the company or the stockholders, or both collectively, and could, by virtue of its authority, make or direct any assessment or call, necessary or preliminary, to the collection of the assets, as fully as the stockholders or directors could do if the company had not gone into bankruptcy. — *Upton v. Hanbrough*, vol. 10, p. 868.

**22. Equitable Attachment.**

Proceedings in bankruptcy may be regarded as an equitable attachment, and the equitable interest vested in the assignee in bankruptcy for the benefit of all the creditors. — *Hinds*, vol. 3, p. 351.

**23. Exemptions.**

In case the equity of redemption in the property is thought to be worth more than one thousand dollars, the exemption allowed by law, the assignee may sell the property and pay the bankrupt from the proceeds the sum of one thousand dollars in cash, unless the situation of the property is such that a homestead can be set apart without injury to the rest of the estate. — *Poleman*, vol. 9, p. 376.

(I.) *Incumbered Property.*

**24. Rents of Mortgaged Property pending Foreclosure.**

Where a mortgagee fails to secure an equitable lien by bill, and the appointment of a receiver on products or rents of mortgaged premises after a default, even though the premises sell for less than his

claims at a sale by the mortgagor's assignee in bankruptcy, he will only be entitled to a *pro rata* share on the deficiency of his claim out of the bankrupt's assets. Products of the mortgaged premises reduced to possession by the mortgagor's assignee in bankruptcy prior to sale of the mortgaged premises, are to be treated as assets to be distributed under the Bankruptcy Act, and the mortgagee cannot claim that a deficiency after sale on his mortgage shall be paid in preference to the claims of other creditors. — *In re Snedaker*, vol. 4, p. 168.

**25. Collaterals to Discount.**

Assignees of a bankrupt cannot recover a sum belonging to the bankrupt (specially pledged for discount) in the appellants' hands, at the date of adjudication of bankruptcy. — *The Chartered Bank of India, etc. v. Hoane et al.*, vol. 4, p. 185.

(K.) *Information Regarding.*

**26. Creditors entitled to.**

Where an assignee has failed in properly informing creditors in regard to their rights and the value of the assets, and the information has been suppressed in the interest of one class of creditors, it is the duty of the court to remove him. — *In re Perkins*, vol. 8, p. 56.

(L.) *Following.*

**27. Property Fraudulently Transferred.**

An assignee in bankruptcy can recover property transferred in fraud of the Bankrupt Act by the debtor though in the hands of a subsequent purchaser, with notice only that a legal advantage had been taken. — *Harrell v. Beall*, vol. 9, p. 49.

**28. Not unless Distinguishable.**

The partnership of M. and S., a firm of country merchants, was dissolved by mutual consent, and S. took the books and accounts to collect and pay the firm debts. M. retained the stock of goods, and continued in business, in the course of which he added and mingled new stock with the old, so that they were undistinguishable. S. thereafter was adjudged a bankrupt on his own petition, and subsequently M. was adjudged a bankrupt upon petition of creditors, and the whole stock in his hands

was taken possession of and sold by his assignee in bankruptcy.

*Held*, Such assets must be regarded as belonging to M's individual estate, and primarily liable to his individual debts in full, before any portion can be applied to pay the debts of M. and S.—*In re Henry B. Montgomery*, vol. 8, p. 429.

### 29. In Hands of a Co-partner.

Where there are both individual and partnership creditors of a bankrupt, but the assets are individual only, though variously consisting of goods purchased by the bankrupt from the partnership on its dissolution prior to the bankruptcy, and being principally the same goods in the purchase of which the partnership debts had originated, the partnership creditors will be entitled to be paid *pari passu* with the individual creditors.—*In re Frederick Jewett*, vol. 1, p. 495.

#### (M.) Partnership Assets.

### 30. Between Separate and Co-partnership Creditors.

Where one who was a member of a late firm files his individual petition in bankruptcy, all his creditors can prove their claims, whether individual or partnership. Partnership assets must be administered according to the 36th Section of the Bankrupt Act, and likewise the assets of the separate estate of bankrupt.—*In re Alexander Frear*, vol. 1, p. 660.

### 31. Separate Assets.

Where there are both joint and separate debts proved in a bankruptcy on a separate petition, the joint creditors are not entitled to participate in the distribution of the assets, until the separate creditors are paid in full.—*In re Owen Byrne*, vol. 1, p. 464.

### 32. Transfer to a Member of Firm.

Where a member of a firm builds a house on property belonging to him in his individual right, with materials belonging to firm, at a time when the firm is indebted to the individual member, the house must be considered as a part of the realty in which the firm has no interest whatever,

and nothing would pass to the assignee in bankruptcy of the firm, except any excess there may be in the value of the property in question over exemption allowed by law, to the copartnership.—*In re J. F. & C. R. Parks*, vol. 9, p. 270.

## ASSIGNEE

See ASSETS,  
COMPOUNDING CLAIMS,  
CONTEMPT,  
CONTRACT,  
COST,  
DISCHARGE,  
ELECTION,  
REGISTER.

### ASSIGNEE—

- I. *Who Eligible*, p. 222.
- II. *Appointment of*, p. 223.
- III. *Election of*, p. 224.
- IV. *Approval*, p. 227.
- V. *Foreign*, p. 227.
- VI. *Voluntary*, p. 228.
- VII. *Under State Law*, p. 228.
- VIII. *Bond*, p. 228.
- IX. *Counsel*, p. 228.
- X. *Estate Vesting in*, p. 229.
- XI. *Recovery by*, p. 233.
- XII. *Suits by and against*, p. 236.
- XIII. *Application for Direction*, p. 241.
- XIV. *Duties*, p. 241.
- XV. *Liability*, p. 247.
- XVI. *Rights*, p. 248.
- XVII. *Compensation*, p. 249.
- XVIII. *Removal*, p. 249.
- I. *Who Eligible*.

### 1. Non-resident having place of Business.

A person residing without, but having a fixed place of daily business within the judicial district, will be appointed assignee in a proper case.—*In re Loder et al.*, vol. 2, p. 515.

### 2. Former Counsel of Bankrupt.

A person who has been of counsel for a bankrupt may be appointed assignee, it being understood that he cannot occupy the position of counsel and assignee at the same time.—*In re Jules Clairmont*, vol. 1, p. 276.

### 3. Attorney at Law of Creditor.

An attorney for a creditor of the bank-

rupt may be assignee of the bankrupt's estate.—*In re Barrett*, vol. 2, p. 588.

**4. Idem.**

There is nothing in the act to prevent an attorney for the creditors from being chosen and appointed assignee by them.—*In re James H. Lawson*, vol. 2, p. 113.

(A.) *Not Eligible.*

**5. Relative of Bankrupt.**

An objection to the appointment of assignee, for the reason that he is related to the bankrupt, is well taken.—*Powell*, vol. 2, p. 45.

**6. Idem. If Family Claims Disputed.**

The son of a bankrupt is not the proper person to be invested with the power of assignee and to investigate the claims of other members of same family.—*Bogert & Oakley*, vol. 3, p. 651.

**7. Director of Preferred Corporation.**

Where director of a bank, to which bank the bankrupt had shortly before confessed judgment had been appointed assignee,

*Held*, That an objection to the assignee acting as such, grounded on the above facts, was well taken.—*In re Powell*, vol. 2, p. 45.

**8. Near Relative of Bankrupt.**

The election of a near relative of the bankrupt as assignee is not proper. In such case, the appointment by the Register of a regular assignee (according to the rules of the district) will be confirmed.—*In re Zinn, Aldrich & Co.*, vol. 4, p. 870.

**9. Non-resident.**

When it is shown that an assignee, chosen by the creditors, resides out of the district, the court will not confirm the choice.—*In re Jas. W. Havens*, vol. 1, p. 485.

**10. Receiver in State Court.**

A receiver cannot be appointed assignee although three-fourths in value of the creditors whose claims were proven nominated him as trustee.—*The Stuyvesant Bank*, vol. 6, p. 272.

II. *Appointment of.*

**11. Although "no Assets."**

Although no creditors have proved their debts, and there are no assets, an assignee should nevertheless be appointed.—*Anonymous*, vol. 1, p. 122.

**12. Where Creditors do not Attend.**

Where no creditors attend on the day fixed for the first meeting, the Register may appoint an assignee under the provisions of Section 13.—*In re Mortimer O. Cogswell*, vol. 1, p. 62.

**13. When no Choice Made.**

Where a vote by creditors at a first meeting results in no choice of an assignee, it is the duty of the Register to inform the creditors that the choice devolves on the Judge, unless there be no opposing interest. An appointment of an assignee by the Register, although no objection was made at the time, adjudged irregular, and appointment annulled.—*In re Pearson*, vol. 2, p. 477.

**14. Provisional.**

A provisional assignee should not be appointed unless the court is satisfied that it is necessary for the protection of the property, and that it will inure to the benefit of all the creditors.—*M. & M. National Bank v. Brady's Bend Iron Co.*, vol. 5, p. 491.

The removal of a debtor's goods in fulfillment of an existing contract made long before the commencement of bankruptcy proceedings, is not fraudulent within the meaning of the Bankrupt Act, and not sufficient grounds for the appointment of a provisional assignee.—*Id.*, vol. 5, p. 492.

**15. Additional.**

An additional assignee may be appointed to act in conjunction with the one previously appointed, upon a petition to the court showing sufficient reason for so doing.—*In re Overton*, vol. 5, p. 366.

**16. Presumption of.**

It is not error to admit in evidence the assignee's bill of sale, to prove the transfer of the account sued on to the intervenor.

When it is admitted that the plaintiff has been adjudged a bankrupt, this court may presume that an assignee has been

appointed, and the sale by him of the bankrupt's assets.

It is not necessary in many instances to prove the official character of public officers, nor to prove an order of the District Court directing assignee to sell the bankrupt's assets.—*J. P. Morris et al. v. H. Swartz*, vol. 10, p. 305.

### 17. Discretion of District Court.

The District Courts have large discretionary powers in matters of bankruptcy, and the Circuit Courts will not interfere with the exercise of such powers, and set aside the appointment, by the District Court, of an assignee, in a case where it is only claimed that the District Court erred in holding that no election had been made by the creditors, there being no allegation against the fitness of the person appointed.—*Woods et al. v. Buckwell et al.*, vol. 7, p. 405.

## III. Election of

### (A.) Practice in.

### 18. Organizing Meeting.

A meeting to prove debts and choose an assignee, should be organized at the hour designated in the official notice, and should be kept open until an assignee is chosen, or it is ascertained that no choice can be made.—*Phelps, Caldwell & Co.*, vol. 1, p. 525.

### 19. Taking the Vote.

As no particular manner of voting is presented by the Bankrupt Act, it may be taken by a ballot or *viva voce*, or it may be taken by calling the name of each creditor, or by calling upon the person or persons representing creditors by power of attorney, to name the choice of the creditor or creditors so represented.—*Lake Superior Canal Co.*, vol. 7, p. 876.

### 20. Interference by Register.

An attempt of a Register to influence the choice of an assignee, is unauthorized and improper.—*In re J. Ogden Smith*, vol. 1, p. 243.

### 21. By Judge.

Where an assignee is chosen by the greater part in value and number of the creditors who have proved their claims, and there is no imputation either upon his capacity or integrity, he is assignee by virtue of law, and the Judge is not compe-

tent to interfere.—*In re John G. Grant*, vol. 2, p. 106.

### 22. How Elected.

The assignees must be elected by the majority in number and value of the creditors who have proved their debts, and not by the greater part of those present and voting.—*Scheiffer v. Garrett*, vol. 2, p. 591.

### 23. Opposition to.

There can be only one first meeting of creditors, and all adjournments are but continuance of the same, and if there appear any opposition or opposing interest to the appointment of a particular assignee, at any stage of the meeting, such opposition is to be considered as continuing until the termination of such first meeting, whether upon the day first appointed or any other day to which such meeting might be continued, unless it affirmatively appeared that such opposition was withdrawn. In such cases it is the duty of the Register to report the facts, and return the matter for the action of the court.—*In re Norton*, vol. 6, p. 297.

### 24. Not to be Postponed.

The Bankrupt Act nowhere directs, nor does it seem to contemplate a postponement of the vote for assignee where some of the creditors have proven their claims, in order to enable others to do so. *Contra*, it contemplates the utmost practicable expedition in choosing the assignee.—*Lake Superior Canal Co.*, vol. 7, p. 876.

### 25. Creditors Proving Claims may Allow.

Creditors who have proved their claims *and are entitled* to vote for assignee, may, if they see fit, consent to wait for others to prove before proceeding to elect an assignee, but it is optional with them.

The taking of a vote pending a contest over the postponement of proof of claims approved.—*Idem*, vol. 7, p. 876.

### 26. Creditors not Proving, have no Voice in.

Creditors who have not proved their debts have no voice or vote in choice of an assignee, nor any right to be heard by attorney or otherwise, in opposition to the proceedings in bankruptcy.—*In re W. D. Hill*, vol. 1, p. 16.

**27. Unaffected by Claims proved Afterwards.**

Proof of claims filed after election for an assignee, will not entitle claimants to a vote thereon to change the result of an election appealed from.—*In re The Lake Superior Ship Canal, Railroad, and Iron Co.*, vol. 7, p. 376.

**(B.) Postponing Proofs.****28. In Cases of Disputed Validity.**

The Register has power to postpone proof of a claim until an assignee is chosen if a case is made out for such postponement within Rule 6 of this court, but he has no power to institute or set on foot the inquiry provided for by the last clause of Section 22 of the act.—*Herman v. Herman*, vol. 3, p. 618.

**29. Not because favorable to Bankrupt.**

Efforts by the bankrupt's friends to compromise and buy up his debts, and stop proceedings in bankruptcy, are no fraud upon the Bankrupt Act, and are no reason why such debts should be postponed and not voted upon for the election of assignee.—*In re Frank*, vol. 5, p. 194.

**30. Only affects Right to Vote.**

The postponement of proof of claims affects no right of the creditor *except the right to vote for assignee*.

**31. Remedy for, when Improper.**

Creditors, whose proof of claim has been postponed by a Register, and who have not been allowed to vote for the assignee, if dissatisfied with the result of the vote, and if they deem the postponement of their claim erroneous, may have the proceedings certified to the court, and if the postponement is shown to have been erroneous, the court may set aside the re-be taken.—*Lake Superior Canal Co.*, vol. 7, p. 376.

**(C.) Who may Vote.****32. Assignee Claim Sold after Proof.**

Debts proved before election and sold and assigned after proof, must be voted upon by the actual owner and not by the original creditor, and the owner will be entitled to only one vote.—*In re Frank*, vol. 5, p. 194.

**33. Attorney authorized by one Member of Firm.**

One member of a firm or copartnership on behalf of the firm may execute a power of attorney to some third person, authorizing him to cast the vote of the firm in the choice of assignees.—*In re Barrett*, vol. 2, 533.

**34. By single Creditor.**

When a single creditor appears at the first meeting of creditors and proves his debt, the right to choose the assignee belongs to him.—*In re Haynes*, vol. 2, p. 227.

**35. Secured Creditor, as to Unsecured Balance.**

A creditor having security, may prove his claim to an amount exceeding the value of such security, without abandoning the same. He is, however, bound to set forth the value of his security, in order to vote as a creditor in respect to the over-plus proven by him, upon the choice of assignee.—*In re Henry C. Bolton*, vol. 1, p. 370.

**36. Where Secured as to Specific Part.**

A creditor who holds security, as to a specified part of his debt, may vote for the assignee with the unsecured creditor on the balance.—*Parkes & Parkes*, vol. 10, p. 82.

**37. When Security Covered by Exemption.**

A creditor whose proof of debt shows that his debt is secured by mortgage on real estate of the bankrupt, but which also shows that it is the bankrupt's homestead, and is occupied by him as such, is entitled to vote upon his whole claim at the meeting of creditors for the choice of assignee.—*In re Stilwell*, vol. 7, p. 226.

**(D.) Who may not Vote.****38. An Agent.**

An agent of creditor proved the claim of his principal in bankruptcy, and sought to vote for assignee.

*Held*, That he could not do so without power of attorney. *In re James J. Purvis*, vol. 1, p. 163.

**39. An Attorney-at-Law.**

An attorney-at-law cannot vote for his client without being duly constituted his attorney in fact.—*Ib.*, vol. 1, p. 163.

**40. A Joint Creditor.**

A joint creditor who had proved the joint claim in bankruptcy sought to vote for assignee.

*Held*, That if the joint creditors were partners he could vote the full amount of the debt; but if he was joint trustee or joint creditor, and no partner, neither could act or vote without consent and authority of the other.—*Ib.*, vol. 1, p. 163.

**41. A Secured Creditor.**

A creditor of a bankrupt holding a claim wholly or partially secured, may prove the same in bankruptcy, but cannot vote for assignee.—*In re Davis & Son*, vol. 1, p. 120.

**42. A Preferred Creditor.**

A creditor who had received a conveyance of property made with intent to defeat or delay the operation of the Bankrupt Act, having reasonable cause to believe a fraud on the Bankrupt Act was intended, cannot prove his claim and vote for assignee.—*Chamberlain*, vol. 8, p. 710.

*(E.) In Cases of Co-partnership.***43. Only Co-partnership Creditors Vote.**

In cases where co-partners are adjudged bankrupts, the partnership creditors only can participate in the election of assignees.—*Scheiffer v. Garrett*, vol. 2, p. 591.

**44. Idem.**

Creditors who have proved a debt against a partner of a firm in bankruptcy have no right to participate in the election of the assignee for the co-partnership, who must be chosen by the creditors of the company only.—*In re Phelps, Caldwell & Co.*, vol. 1, p. 525.

**45. Contra, in Separate Bankruptcy of a Co-partner.**

Where creditors of a firm prove claims in bankruptcy against a member who had petitioned individually,

*Held*, The private creditors only could vote for assignee.—*Purvis*, vol. 1, p. 163.

*(F.) Miscellaneous.***46. Objection to Vote Influenced by the Bankrupt.**

Where counsel representing certain creditors objected to the votes being received for choice of assignee, from certain other creditors, alleging the same to have been procured by collusion of the bankrupt, and offering testimony in support, the Register declined to hear such proof, held correct.—*Noble*, vol. 8, p. 96.

**47. Majority Claims Proved, though not Voted on.**

The assignees must be elected by the majority in number and value of the creditors who have proved their debts, and not by the greater part of those present and voting.—*Scheiffer & Garrett*, vol. 2, p. 591.

**48. Idem.**

A person to be elected assignee must receive majority of all who have proved claims, and not simply a majority of votes cast.—*Purvis*, vol. 1, p. 163.

**49. Firm Creditors counted as one.**

A firm creditor of the bankrupt can be counted only as one creditor in the vote for assignee.—*Purvis*, vol. 1, p. 163.

**50. Changing Vote.**

A creditor may change his vote as often as he sees fit until he has signed the certificate of choice of assignee.—*Pfromm*, vol. 8, p. 357.

**51. If vote Paid for.**

Where a creditor votes corruptly, as by reason of a consideration paid by bankrupt, his vote will be excluded.—*Pfromm*, vol. 8, p. 357.

**52. Where New Election unnecessary.**

An election of assignee will not be sent back because a creditor has voted corruptly, unless the result would be changed by excluding his vote.—*In re John & Martin Pfromm*, vol. 8, p. 357.

**53. When ordered.**

When the Judge refuses to approve the appointment of the assignee elected by the creditors, he may, under section thirteen, clause four, order a new election by the creditors. The fifth clause, section eighteen, applies to cases where the assignee has been removed or has resigned,



and not to cases where the judge disapproves the action of the creditors.—*In re Scheiffer & Garrett*, vol. 2, p. 591.

#### **54. Separate Assignee, in different States.**

Where a corporation, holding property, and carrying on business in three several States, is adjudicated bankrupt and assignees are appointed who are respectively citizens of two States in which proceedings in bankruptcy are pending, but none is appointed in the third State, in which proceedings in bankruptcy are also pending,

*Held*, That as three assignees were to be chosen, and proceedings were pending in three different districts, it ought to have been so arranged that each of the districts could have an assignee within it, a resident thereof. The court in the district in which no assignee has been selected, therefore declines to approve of the election of the assignees.—*In re Boston, Hartford & Erie R. R. Co.*, vol. 5, p. 233.

#### **55. Approval of Judge pre-requisite to Assignee acting.**

The election of the assignee, or the appointment by the Register, in cases where no election is made by the creditors, must be approved by the Judge; and until approval the assignee has no power to act.—*Scheiffer & Garrett*, vol. 2, p. 591.

#### **56. Cannot change Vote after Meeting.**

As the Register can appoint only where there is no opposing interest, no creditor can change his vote after the meeting has adjourned, and thereby cause a failure to elect.—*Idem*, vol. 2, p. 591.

#### **57. Mistake or improper Choice.**

If a mistake occurs, or the creditor has good cause to object to the choice made, he can make his objection to the Judge, before whom the whole subject will be heard and determined.—*Id.*, vol. 2, p. 591.

### **IV. Approval.**

#### **(A.) When Approved.**

#### **58. If improper Vote did not affect Result.**

An election of assignee will not be sent back because a creditor has voted corruptly, unless the result would be changed by ex-

cluding his vote.—*In re John & Martin Pfromm*, vol. 8, p. 357.

#### **(B.) Disapproved.**

#### **59. Professional Assignees.**

The court will not sanction the practice of soliciting the votes of creditors by one seeking thereby to be chosen assignee, especially when such person is a stranger to the creditors, and makes it a regular business to seek out creditors and persuade them to prove their debts and vote for him as assignee.—*In re John Doe*, vol. 2, p. 808.

#### **60. When election Purchased.**

Where B, to secure his election as assignee in bankruptcy, agreed with two of the creditors that he would pay their claims in full if they would give him their powers of attorney, the court disregarded his election and appointed the official assignee.—*In re Haas & Samson*, vol. 8, p. 189.

#### **61. Elected by Influence of Bankrupt.**

Where it appears that an assignee has been chosen by the influence of the bankrupt, the court will feel bound to withhold its approval; and wherever a Register is satisfied that reasons exist why an assignee chosen or appointed should not be approved by the Judge, it is his duty to state such reasons fully, in submitting the question of such approval to the Judge.—*In re Augustus A. Bliss*, vol. 1, p. 78.

#### **(C.) Necessary in All Cases.**

#### **62. Whether Elected or Appointed.**

The election of the assignee, or the appointment by the Register in cases where no election is made by the creditors, must be approved by the Judge.—*Scheiffer & Garrett*, vol. 2, p. 591.

### **V. Under Bankrupt Law of Foreign States.**

#### **63. Title not Recognized in New York as to Local Property.**

The plaintiffs were trustees in bankruptcy of the firm of Sichel & Co., the members of which firm were residents, and subject to the laws of the kingdom of Belgium, and were adjudged bankrupts in proper proceedings for that purpose in the Tribunal of Commerce of the city of Brussels.

As such trustees they claim to recover the value of certain property alleged to have been fraudulently obtained from the said bankrupts. At the trial the plaintiffs were non-suited.

*Held*, That the courts of this State will not recognize or enforce a right or title acquired under foreign bankrupt laws or foreign bankrupt proceedings, so far as affects property within their jurisdiction or demands against residents of this State.

There is no distinction, in this respect, between cases of voluntary and of involuntary bankruptcy.—*Mosselmann & Poelaert Trustees, v. Meyer Caen*, vol. 10, p. 512.

#### VI. Voluntary Assignees.

##### 64. Not liable for Property distributed.

The assignee of B brought suit against E to recover the value of certain personal property which had been disposed of by the defendant. The claim was, that, knowing the insolvency of B, he received under general assignment to himself all the property of B.

That as E was not a creditor of the bankrupt, and as he had distributed some of the property to the preferred creditors under the general assignment, before the commencement of proceedings in bankruptcy, he was not chargeable with the value of any property turned over to lawful creditors of the bankrupt, but was liable for the balance only which shall appear to be in his hands after a proper accounting with the assignee in bankruptcy.—*Jones v. Kinney et al.*, vol. 4, p. 649.

#### VII. Under State Law.

##### 65. Not entitled to Compensation.

Assignees under the State law cannot receive allowance for attorneys' fees, nor compensation for their own services where the debtor has been adjudged a bankrupt.—*In re Cohn*, vol. 6, p. 379.

#### VIII. Bond.

##### 66. May be required.

A chosen assignee may, in a proper case, on application of a creditor, be required to give security.—*In re Fernberg et al.*, vol. 2, p. 353.

##### 67. Register's Power to Require, doubted.

The power of the Register to require the assignee to give the bond required by the 13th Section of the Act upon the written request of creditors who have proven their claim, or to proceed to take testimony for the purpose of ascertaining the amount in which such bond ought to be given, *doubted*.—*In re Bininger & Clark*, vol. 9, p. 568.

#### IX. Counsel.

##### 68. Court not General Adviser.

Neither court nor Register can be the general adviser of assignees as to their acts.—*Sturgeon*, vol. 1, p. 498.

##### 69. Son employed as, Disapproved.

Where two assignees were jointly appointed, a charge for professional services by the son of one of them disallowed, as tending to abuses.—*The New York Mail Steamship Co.*, vol. 2, p. 423.

##### 70. Not chargeable with Fees of Bankrupt Counsel in resisting Adjudication.

Where attorneys, among other charges against the assignees, claimed payment of fees out of the general fund for professional services rendered in opposing petition to have a corporation adjudged an involuntary bankrupt,

*Held*, That the services were not rendered to the assignee but to the bankrupt prior to the adjudication, and the claim was a debt provable in bankruptcy.—*N. Y. Mail S. S. Co.*, vol. 2, p. 554.

##### 71. To Employ should obtain leave of Court.

An assignee is not at liberty to charge the assets of the estate in his hands for professional and clerical services rendered him in the execution of his trust until the same shall have been first duly allowed by the court.—*In re Noyes*, vol. 6, p. 277.

##### 72. Allowance of Charges of.

Before incurring expenses for professional services and clerk hire, an assignee must apply to court for proper authority; if, however, he has incurred and paid such expenses, or demands compensation beyond what he is entitled to by Section 28 of the Bankrupt Law, he must

accompany his final account with a separate and distinct application for an allowance of the charges, and submit to such examination and furnish such proofs as may be required touching the necessity of such disbursements and services.—Vol. 6, p. 277.

### 73. May be required to Change.

A petition for the removal of an assignee was filed, charging involving the estate in unnecessary litigation. The court held that if he had erred through erroneous legal advice, it may be cause for ordering him to employ other counsel, but not necessarily for his removal.—*In re Blodget & Sanford*, vol. 5, p. 472.

## X. Estate Vesting in.

### 74. Rights of Action in State Court.

Rights and rights of action of a bankrupt, in suits and actions pending in State courts, pass and vest in the assignee in bankruptcy. The bankrupt ordered to execute proper instruments to enable the assignee to represent him in his action in the State court, and enjoined further proceedings in respect thereof without leave of the Bankruptcy Court.—*Clark & Bininger*, vol. 3, p. 491.

### 75. Conveyances in Fraud of Creditors.

If A. conveys his property to B. when in failing circumstances, for the purpose of defrauding his creditors, and B. has knowledge of these facts, under the Bankrupt Law of 1867 if A. is afterwards adjudged bankrupt, the sale of the goods to B. is void, and the title vests in the assignee in bankruptcy as soon as he is appointed, and he may sue to recover possession of them.—*Bolander v. Gentry*, vol. 2, p. 655.

### 76. Copartnership and Individual Property.

An assignee of a bankrupt firm takes, by his assignment, all the property of the firm and of the individual members thereof, even though part of the property be out of the district in which the bankrupts reside, and owned, in part, by partners who have not been joined in the bankruptcy proceedings.—*In re Warren Leland and Charles Leland*, vol. 5, p. 222.

### 77. Mortgages void as to Creditors.

Mortgages and bills of sale of personal

property which are void as to creditors under the Statute of Frauds of the State where the transactions occur, are void and convey no title as against the assignee in bankruptcy.—*Edmonson v. Hyde*, vol. 7, p. 1.

### 78. Conveyance to Wife reserving absolute power of Sale.

An assignee filed a bill in equity against the wife of a bankrupt and her surviving trustee, to set aside a conveyance of lands and personal property made by the said bankrupt to trustee for the alleged consideration of an indebtedness to his wife for land, slaves, and other personal property, and money belonging to her. At this time the bankrupt was embarrassed in his pecuniary circumstances. The deed gave no power to the wife to dispose of the property during her lifetime, or by will after her death, without the consent of trustees. It reserved, however, to the grantor the right, and gave to either of the trustees the power to sell and convey any part of the property without the consent of the wife. Assignment held void.—*Fisher, assignee, v. Henderson et al.*, vol. 8, p. 175.

### 79. Levied on—Subject to Levy.

Where an execution on final judgment has been levied by a sheriff prior to the commencement of proceedings in bankruptcy, the possession of the sheriff cannot be disturbed by the assignee. The assignee is only entitled to claim the residue in the hands of the sheriff after satisfying the execution in his hands.—*Marshall v. Knox*, vol. 8, p. 97.

### 80. Subject to Equities against Bankrupt—Absence of Fraud.

In the absence of fraud, the assignee takes only such rights and interests as the bankrupt himself had or could assert at the time of his bankruptcy, and consequently they are affected with all the equities which would affect the bankrupt himself if he were asserting those rights and interests.—*In re Dow*, vol. 6, p. 10.

### 81. Even as to Books of Account.

The assignee in bankruptcy can claim only such interest and right in any property as the bankrupt could have claimed at the filing of the petition by or against him. Hence, where the bankrupt has

made conveyances by which his books of account pass to an assignee of his own selection, the assignee in bankruptcy cannot claim them until such conveyances are shown to have been fraudulent and void. To obtain possession of such books an assignee must proceed by a bill in equity or action at law, in which the validity of said conveyances can be tested, and not by simple petition.—*Rogers, Assignee, v. Winsor*, vol. 6, p. 247.

### 82. After-Acquired Property—Mortgage.

A mortgage of personal property being under the laws of Wisconsin, ineffectual to pass after-acquired property, the assignee in bankruptcy is entitled to such property as against the mortgagee who had taken possession.—*Eldridge*, vol. 4, p. 498.

### 83. Rights of Judgment Creditor.

The assignee in bankruptcy has no greater right than a judgment creditor, and although a sheriff's deed may be given as a mere cover, yet if his grantee convey such property to a *bona fide* purchaser without notice, for value, that deed will be protected.—*Beall v. Harrell et al.*, vol. 7, p. 400.

### 84. Contra.

An assignee in bankruptcy has not the rights of a judgment creditor. No such right is conferred on him by the Bankrupt Act.—*Cook et al.*, vol. 9, p. 155.

### 85. Time it Vests.

Payments made to a debtor after a petition in bankruptcy has been filed against him, with a view of defeating the Bankrupt Act, or any of its essential requirements, are void, and the persons by whom such payments are made can be held to answer for the original demand of the assignee, whose title relates back to the date of the commencement of proceedings in bankruptcy.—*Babbitt, Assignee, v. Burgess*, vol. 7, p. 561.

### 86. Commencement of Proceedings.

Only such property as bankrupt had at the time of the commencement of proceedings in bankruptcy passed to and vested in the assignee.—*Patterson*, vol. 1, p. 125.

### (A.) Does not Vest.

### 87. Property Recovered by Receiver.

Where creditors' bills were filed and a receiver appointed, who obtained possession of the property of the debtor, an assignee in bankruptcy has no right to the property thus secured by law to the payment of judgment creditors. Motion to dissolve the injunction granted.—*John Sedgwick, Assignee, v. William Menck & Charles B. Bostwick*, vol. 1, p. 675.

### 88. Policy of Insurance—Life of Debtor.

An assignee in bankruptcy cannot require a creditor either to retain a policy of insurance on the life of his debtor, given as collateral security for the payment of a debt, and withdraw his proof of debt, or to surrender such policy to the assignee, for the benefit of the estate, and take a dividend on all his claim.—*In re Newland*, vol. 7, p. 477.

### 89. Wife's Dower after Fraudulent Conveyance.

As against the assignee in bankruptcy, the wife is not barred or estopped to claim dower, by reason of her having joined her husband in a deed which is fraudulent as to creditors, and which had, for this reason, been set aside at the instance of the assignee. A similar principle was applied under the statute of Missouri to the homestead exemption right, which, as against the assignee in bankruptcy, was held not to be forfeited by the making of a fraudulent conveyance, which was set aside at the instance of the assignee.—*Coe v. Wilder et al.*, vol. 7, p. 241.

### 90. Levy, or Distress prior is Paramount.

The right of an execution creditor or a landlord, upon a warrant of distress, is paramount to that of the assignee in bankruptcy, where the execution or warrant of distress was issued before the commencement of proceedings in bankruptcy.—*Wilson v. Childs; Anshutz v. Campbell; in re Weamer*, vol. 8, p. 527.

### 91. Usufruct (Personal).

Where the bankrupt has only a usufruct in property, not capable of being transferred by sale, except with the owner's permission, such usufruct does not pass to the assignee in bankruptcy.—*In re O'Dowd*, vol. 8, p. 451.

**92 Property Acquired by Fraud.**

A made a loan to B, and delivered to B's agent a package of banknotes containing the amount of the loan. At the time the agent of B was introduced to negotiate the loan, B was insolvent, and the contract made by his agent was after his failure, but before the news had reached A. It also appeared that B had then resolved not to pay the bill, or note, which was given as evidence of the loan. That as soon as A was informed of the failure he endeavored to reclaim the package of notes still in the hands of B's agent; that it was placed in a bank, with the seal unbroken, for the benefit of A; and, the next day, B, in the presence of the president of the bank, expressly disclaimed ownership of the said package, and declared that it justly belonged to A.

*Held*, That the assignee in bankruptcy of A had no title to the package of notes, for the reason that fraud is ineffective to change the ownership of property obtained by means of it. That the assignee is invested with the rights of the bankrupt only; subject, of course, to all the equities that would have affected him if he had not been adjudged a bankrupt.—*Purviance, Assignee, v. Union National Bank of Pittsburgh*, vol. 8, p. 447.

**93. Proceeds of Consignment Converted.**

A consigned goods to B with orders to sell them and take negotiable notes payable to his order. B sold the goods to C, taking negotiable notes payable to himself instead of to A. At the time of the sale C was accommodation endorser for B to a large amount. B discounted the notes above mentioned and paid the proceeds to C, to apply towards taking up the notes on which C was endorser. B was insolvent at that time, and shortly thereafter was adjudged a bankrupt. His assignee brought suit and recovered the amount thus paid to C. A filed a bill in equity to recover the money in the hands of the assignee.

*Held*, That the fund having been recovered not in virtue of any right in the complainant personally, but in virtue of the rights of the bankrupt's creditors generally, and in virtue of the clear legal right of all the creditors, under the Bankrupt Law, it must

be distributed among them generally and not given to one. Bill dismissed with costs.—*White v. Jones*, vol. 6, p. 175.

**94. Relation back of—State Receiver.**

Where creditors, prior to the commencement of bankruptcy proceedings by other creditors, recovered a judgment, and caused execution to be issued and levy made on certain property of the debtor, and also commenced supplementary proceedings in a State court, and had a receiver appointed for certain choses in action, and where, after the adjudication of the debtor's bankruptcy, the receivership under the State court was extended to all the debtor's property, and the assignee in bankruptcy was not made a party thereto,

*Held*, The appointment of an assignee in bankruptcy relates back, and clothes him with title to all the bankrupt's legal and equitable rights and interests, and choses in action, which belonged to him on presentation of petition.—*Smith & Co. v. Buchanan et al.*, vol. 4, p. 397.

**95. To Commencement of Proceedings.**

Assignee's title relates back to the date of the commencement of proceedings in bankruptcy.—*Babbitt v. Burgess*, vol. 7, p. 561.

**96. In Involuntary Proceedings—Third Persons.**

Section 14 and 42 of the Bankrupt Act compared, and whether the assignment in an involuntary case would relate back to the time of instituting the proceedings in bankruptcy by the adverse creditor, so as to affect the rights of third persons, doubted.—*Lenihan v. Haman et al.*, vol. 8, p. 557.

**97. Affected by Voidable Transfers of Bankrupt.**

The assignee in bankruptcy can claim only such interest and right in any property as the bankrupt could have claimed at the filing of the petition by or against him. Hence, where the bankrupt has made conveyances by which his books of account pass to an assignee of his own selection, the assignee in bankruptcy cannot take them until such conveyances are shown to have been fraudulent and void.—*Rogers, Assignee, v. Winsor*, vol. 6, p. 246.



**98. Subject to Equities against Bankrupt.**

The assignee is invested with the rights of the bankrupt only, subject, of course, to all the equities which would have affected him if he had not been adjudged a bankrupt.—*Purviance, Assignee, v. Union National Bank of Pittsburgh*, vol. 8, p. 447.

**99. Exempted Property.**

No title to exempt property passes to the assignee by the assignment. It remains in the bankrupt; at his death it passes to his legal representatives.—*In re Hester*, vol. 5, p. 285.

**100. Idem. When Disputed.**

Where a homestead was set apart to a family, ten days before commencement of proceedings in bankruptcy, but from which judgment an appeal was then pending, the local statute declaring that the appeal suspends but does not vacate the judgment,

*Held*, The Bankrupt Court must respect the homestead right, though suspended, and will not take possession of the property for distribution to determine the validity or propriety of such judgment, but the assignee in bankruptcy will be directed to make himself a party to the proceedings in the State court, and first determine his right to the possession of the property, in that tribunal.—*In re Mosely v. Wells & Co.*, vol. 8, p. 208.

**101. To rent of Mortgage Property pending Foreclosure.**

A second mortgagee has no right, the first mortgagee not interfering to take possession of the property covered by his mortgage, and retain possession of the said premises against the assignee in bankruptcy of the mortgagor for the purpose of foreclosure, or to enable him, the second mortgagee, to appropriate the rents and profits of the land towards the payment of the mortgage debt. His remedy is to apply to the Bankrupt Court for relief, which has exclusive jurisdiction over all the bankrupt's property.—*Hutchings et al., Assignee, v. Muzzy Iron Works*, vol. 8, p. 458.

**102. Barred by Foreclosure in State Court.**

A foreclosure sale against property of a bankrupt, taking place in the State court,

by permission of the Bankrupt Court, cannot be afterwards set aside by an assignee in bankruptcy; and the purchaser at such sale will be compelled to take title.—*Lenihan v. Haman et al.*, vol. 8, p. 557.

**103. Purchase Money only Partially paid.**

A written contract provided that the ownership of personal property was not to pass until the stipulated price had been paid.

*Held*, That, under the contract, the ownership would remain in the vendor although the vendor had possession, and all but a small portion of the money due had been paid; that if the assignee in bankruptcy shall deem it for the interest of the creditors, he may pay the balance due to the vendor, and hold the property for the benefit of the estate.—*In re Lyon*, vol. 7, p. 182.

**104. Superior to Lien for Undue Debt.**

Where a creditor obtained judgment for a debt not yet payable and thereby obtained a lien by levy on the goods of the debtor,

*Held*, The lien was invalid against the assignee in bankruptcy of the debtor, though the circumstances did not prove a statute preference.—*Partridge v. Dearborn*, vol. 9, p. 474.

**105. Subject to Banker Lien on Deposits.**

A bank has the right under the Bankrupt Law to set off the amount of a protested draft against the deposit of an insolvent debtor, hence, when the amount of such draft exceeds the amount of the deposit, the assignee in bankruptcy is not entitled to the deposit or any part of it.—*In re Petrie et al.*, vol. 7, p. 332.

**106. Property on Premises subject to Rent.**

When sufficient goods remain on the premises occupied by the bankrupt to satisfy the rent on distress, the assignee should pay the full amount due up to the time of his surrender to the landlord.—*Longstreet, Assignee, v. Pennock et al.*, vol. 7, p. 449.

**107. Subject to Equitable Lien.**

G was carrying on lumbering operations and applied to H for assistance, who made on February 5th, advances for that purpose, and received as security therefor (and what he should owe him on settle-



ment), an assignment of G's permits. G filed his petition in bankruptcy February 29th. H made other advances on March 21st, and transferred his claims against G, to P, who received from H a transfer of the permits, and made other advances to G, to complete the operations.

*Held*, That under Section 14 the title of the assignee relates back to the date of filing the petition in bankruptcy; that the advance of February 5th was a legal claim, and should be paid by the assignee; that the advances subsequent to February 29th constitute an equitable claim only, and should be confined to discharging lien claims for labor, getting the logs to market, and stumpage, etc.—*Gregg*, vol. 3, p. 529.

## XII. Recovery of Property by.

### 108. Six Elements necessary to render Preference void.

The insolvency, the intent to prefer, and the doing or suffering the thing which works the preference, are the elements on the part of the debtor. The elements on the part of the creditor are the receiving or being benefited by such thing, the having reasonable cause to believe the debtor insolvent, and the having reasonable cause to believe that a preference is intended. These six elements must co-exist, but nothing else is necessary to make the transaction void, if challenged by the assignee in bankruptcy in due time.—*Kohlsaat v. Hoguet*, vol. 5, p. 159.

### 109. From Subsequent Purchaser, with Notice.

A, who was insolvent at the time, wrote to his brother-in-law B, at St. Louis, to come and buy him out. In response to this letter, B arranged to take the whole of his stock at twenty-five per cent. below cost. B, leaving the stock in possession of A, offered to sell the whole stock to C at twenty per cent. below cost. Thereupon B and C went together to the residence of A; C examined, paid for, and shipped the goods away. The assignee in bankruptcy sued C for the goods and recovered a verdict. Defendant then appealed to the United States Court on the ground that the jury were improperly charged.

*Held*, That the charge was perfectly proper, as the judge of the court below had

distinctly informed the jury that notice of the fraud or participation in it, on the part of the defendant, was essential to the recovery on the part of the assignee. Judgment affirmed.—*Babbitt, assignee, v. Walbrun & Co.*, vol. 6, p. 359.

### 110. Collaterals on Claim proved as Unsecured.

The claim consisted of three notes, upon two of which the bankrupt was indorser; the third had been extended by agreement between the maker and the bank.

*Held*, That the first two notes were valid against the bankrupt's estate, but that his (bankrupt's) liability had been relieved on the third note by the agreement to extend the note, and was, therefore, not a valid claim, and must be expunged from the proof of debt, and that, as the claim of the bank had been proved as an unsecured debt, it must relinquish the securities held by it to the assignee.—*Granger v. Sabin*, vol. 8, p. 80.

### 111. Conveyances Void as to Creditors.

The assignee represents the creditor's rights as well as those of the bankrupt, and any incumbrance which would be void as against creditors would be void as against him.—*In re Charles H. Wynne (Involuntary)*, vol. 4, p. 23.

### 112. Avoid Fraudulent Mortgage.

A mortgage fraudulent and void as to creditors is so as against the assignee in bankruptcy.—*In re Merrill*, vol. 8, p. 117.

### 113. Statutory Penalties.

The Bankrupt Act does not grant to the assignee of a bankrupt any right or power to institute proceedings for the recovery of a statutory penalty forfeited and claimed by the bankrupt either prior or subsequent to proceedings against him in bankruptcy.—*Brombey v. Smith et al.*, vol. 5, p. 152.

### 114. Usurious Surplus.

An assignee, through the court, may require the creditor to prove his debt in the usual form, reciting the security and setting forth the consideration, and may contest the claim for any usurious surplus.—*Id.*, vol. 5.

### 115. Unpaid Subscription to Stock transferred.

This was a suit brought by an assignee in bankruptcy against a stockholder of an

insolvent insurance company, to recover his unpaid subscription, he claiming not to be liable therefor because he had not caused his stock to be transferred on the books of the company.

*Held*, Liable under circumstances of case.—*Upton, Assignee, v. Burnham*, vol. 8, p. 221.

**116. Securities pledged for Usurious Loan on Joint Note.**

An assignee in bankruptcy of one of two joint makers of a note secured by a mortgage cannot maintain a petition to declare the security void for usury.—*Brombey v. Smith et al.*, vol. 5, p. 152.

**117. On void Conveyance Irrespective of Bankrupt Act.**

An assignee in bankruptcy by Sec. 14 of the act is empowered to recover property transferred in fraud of creditors by the bankrupt, to set aside conveyances fraudulent at common law as well as those in fraud of the Bankrupt Act.—*Bean v. Am-sink*, vol. 8, p. 228.

**118. Idem. Made over Four Months prior to Proceedings.**

A mortgage void on its face as to creditors may be set aside by the assignee in bankruptcy, though made more than four months prior to the commencement of bankruptcy proceedings.—*Seaver v. Spink, Assignee*, vol. 8, p. 218.

**119. Money paid on Fraudulent Composition.**

On grounds of public policy the courts will not enforce such agreements, and, where carried into execution, the money or other thing of value obtained thereby may be recovered by the other creditors, by the debtor himself, or by his assignee in bankruptcy. This rule applies equally where the creditor receiving the advantage signed the composition-deed last as well as first. Where all the creditors had compromised by taking notes at six months for seventy per cent., and the last creditor had made it a secret condition of his acceptance of the notes that the debtor should immediately discount the compromise notes at fifty per cent. cash, which was accordingly done,

*Held*, That the assignee was entitled to recover the amount so paid.—*Bean v. Am-sink*, vol. 8, p. 228.

**120. Proceeds Execution on Void Judgment.**

The assignee has a right to recover from the judgment creditor (a bank) the proceeds of sale by execution on a void judgment, although it has given no receipt to the sheriff, but only a certificate of deposit.—*Traders' National Bank of Chicago v. Campbell*, vol. 6, p. 858.

**121. Property "Suffered to be Taken."**

An insolvent debtor, within four months before the filing of a petition in bankruptcy, suffered his property to be seized and sold on execution by a creditor who had reasonable cause to believe the debtor insolvent at that time.

*Held*, That the assignee in bankruptcy was entitled to a judgment against the creditor for the value of the property seized on the execution.

In this case the value of the property was fixed at the amount the creditor authorized to be endorsed upon the execution.—*Christman v. Haynes*, vol. 8, p. 528.

**122. Usury Paid.**

An assignee in bankruptcy may sue for money paid as usury by the bankrupt. The right to recover this is not a personal privilege to the payer, or treated as a moral wrong by the lender; but may be enforced by the assignee of the payer against the representative of the lender, and is based upon the principle that the payment in violation of law gave no title to the lender; and the money in the hands of the lender remains the property and a part of the estate of the payer.—*Wheelock v. Lee*, vol. 10, p. 863.

**123. Unpaid Stock Subscription, when Assessment Required.**

The assignee in bankruptcy has all the authority of a receiver to collect demands and pay debts, and, under the order of the court appointing him, an assessment may be made on the unpaid shares just as if the same had been ordered by the corporation before bankruptcy.—*Nathaniel Myers, Assignee of St. Louis Soap Company, v. F. A. Seeley*, vol. 10, p. 411.

**124. Fraudulent Payments.**

Fraudulent payments may be recovered by the bankrupt's assignee.—*Morgan, Root & Co. v. Erman E. Mastick*, vol. 2, p. 521.

**125. Amount of Recovery. Exemption.**

An assignment<sup>a</sup> by an insolvent of all his property, for the benefit of preferred creditors, is an act of bankruptcy. Where property of an insolvent was assigned to the creditors with fraudulent preference,

*Held*, In an action brought by the assignee in bankruptcy, to recover said property, that the value of property exempt from execution must be deducted, and judgment entered up for the remainder.—*Grow v. Ballard et al.*, vol. 2, p. 194.

**126. Idem. Expenses of Sale.**

Where a creditor takes an unlawful preference by executions and seizes the bankrupt's property, the assignee is entitled to recover from the creditor such property or its value, and in the accounting the creditor is only to be allowed for the actual expenses of sale, which does not include the sheriff's fees.—*Sedgwick, Assignee, v. Millward*, vol. 5, p. 347.

**127. Is not a Penalty.**

The right of recovery of property transferred by an insolvent, given by Section 35 of the Bankrupt Act to the assignee, is in no sense a penalty. The transfer and title are simply declared void, hence the vesting the title in the assignee.—*Cook v. Waters, Whipple et al.*, vol. 9, p. 155.

**128. Conveyances Void as to Creditors.**

An assignee in bankruptcy may set aside any conveyance or fraudulent transfer, that, but for the Bankrupt Act, might have been set aside by creditors after having obtained judgment. — *Vincent M. Smith, Assignee, etc., v. Joseph N. Ely et al.*, vol. 10, p. 554.

**129. Conveyances Void under State law.**

The assignee is authorized by the express terms of the 14th Section of the Bankrupt Act to pursue the property thus attempted to be transferred, when such transfer would be void under the law of the State where made, and, as auxiliary to its recovery, to ask that the sale by the bankrupt be annulled.—*Massey et al. v. Allen, Assignee*, vol. 7, p. 401.

**(B.) When Assignee cannot Recover.****130. Deed executed over Four Months valid Inter Partes.**

A deed of trust made by a bankrupt more than four months prior to the commencement of proceedings in bankruptcy, which by the law of the State where made is valid between the grantor and grantee, and against subsequent purchasers with actual notice, without being recorded, cannot be avoided by the assignee in bankruptcy, under Section 35, because not recorded until within four months prior to the commencement of the proceedings in bankruptcy.

*Aliter*, If by the law of the State where executed the recording is a condition precedent to its validity.—*Seaver v. Spink*, vol. 8, p. 218.

**131. Preference made over Four Months.**

When the assignee seeks to recover back money paid with a view to give a preference to a creditor, he must show, in order to entitle himself to recover, that the preference was given within four months before the filing of the petition in bankruptcy.—*Robert J. Hubbard and Andrew J. Hennion v. The Allaire Works*, vol. 4, p. 623.

**132. Idem. Within Four Months without intent, etc.**

In an action of trover brought by an assignee in bankruptcy against a creditor to recover the value of certain property transferred by the bankrupt to him within four months preceding the adjudication in bankruptcy, it not being shown that a preference of creditors or a fraud on the act was thereby intended, and that the transfer was made in pursuance of an agreement entered into long before,

*Held*, That the assignee could not recover.—*Re Winthrop M. Wadsworth, Assignee of Robert R. Treadwell, v. Edwin S. Tyler*, vol. 2, p. 316.

**133. Idem.**

Something more than passive non-resistance in an insolvent debtor is necessary to invalidate a judgment and levy on his property when the debt is due and he has no defense.

Though the judgment debtor may know

the insolvent condition of his debtor, the judgment and levy are not therefore void. A lien thus obtained by him will not be displaced by subsequent proceedings in bankruptcy, though commenced within four months after levy of the execution, and the rendition of the judgment.—*Wilson v. City Bank, St. Paul*, vol. 9, p. 97.

**134. Idem. If Transfer made in Pursuance of Prior Agreement.**

In an action of trover brought by an assignee in bankruptcy against a creditor to recover the value of certain property, transferred by the bankrupt to him within four months preceding the adjudication of bankruptcy, it not being shown that a preference of creditors or a fraud on the act was thereby intended, and the transfer was made in pursuance of an agreement entered into long before,

*Held*, That the assignee could not recover.—*Winthrop M. Wadsworth, Assignee of Robert R. Treadwell, v. Edwin S. Tyler*, vol. 2, p. 816.

**(C.) Miscellaneous Provisions.**

**135. Suing in U. S. Court for Proceeds of Execution in State Court.**

An assignee has the right to proceed against a creditor in the Federal court for the proceeds of a sale on an execution issued out of a State Court, where the judgment on which it is founded is alleged to be in fraud of the Bankrupt Act.—*Traders' Bank v. Campbell*, vol. 6, p. 353.

**136. Exclusive Right to Sue.**

The intent and purposes of the Bankrupt Law are that the property of the bankrupt (except as exempted thereby) at the time of filing the petition, shall vest in the assignee, and he alone has the right to subject lands, alleged to have been fraudulently conveyed to the wife, to the payment of the debts of the husband's creditors.—*Allen & Co. v. Montgomery*, vol. 10, p. 503.

**137. Property Seized on Mesne Attachment.**

Where property has been attached by an officer of a State court on *mesne* process, within four months prior to commencement of proceedings in bankruptcy, the attachment is dissolved by the Bankrupt Law; but the assignee in bankruptcy

must apply to the State court to have the officer directed to turn over the property, and not to the Federal court.—*Johnson, Assignee, v. Bishop, Sheriff*, vol. 8, p. 533.

**138. Property Converted after Proceedings Commenced.**

An assignee in bankruptcy may bring trover for property converted prior to his appointment as assignee, if done after the filing of the petition in bankruptcy. If the conversion was prior to the filing of the petition he must sue in equity.—*Mitchell v. McKibbin*, vol. 8, p. 548.

**XII. Suits By and Against.**

(A.) *Jurisdiction, Federal Court*, p. 236.

(B.) " *State Court*, p. 237.

(C.) *Subject of Action*, p. 238.

(D.) *Practice In*, p. 239.

(E.) *Pleading*, p. 240.

(F.) *Defenses*, p. 240.

(G.) *Demand and Refusal*, 240.

(H.) *Subrogation*, p. 241.

(I.) *Construction of Pleading*, p. 242.

**1st. The Circuit Court.**

**139. By or against Adverse Claimant.**

Original jurisdiction is conferred upon all the Circuit Courts, concurrent with the District Court of the same district, in all suits of law or in equity which may be brought by the assignee in bankruptcy against any person claiming an adverse interest, or by such person against such assignee, touching any property of said bankrupt, transferable to or vested in such assignee.—*Shearman v. Bingham et al.*, vol. 7, p. 490.

**140. Cumulative of Judiciary Act.**

Where an assignee in bankruptcy would be entitled to sue a defendant in the Circuit Court of the United States by the provisions of the judiciary act, his being an assignee in bankruptcy does not restrict his application to the Circuit Court to those cases prescribed by the Bankrupt Act.—*Payson, assignee, v. Dietz*, vol. 8, p. 193.

**141. Property Transferred in Fraud of Act.**

The action given to the assignee by Section 35 of the Bankrupt Act to recover property, or the value thereof, transferred contrary to such section, is within the jurisdic-

tion conferred upon the Circuit Court by Section 2 of said act prior to the amendment of June 22, 1874.—*Brooks, etc., v. McCracken*, vol. 10, p. 461.

#### Contra.

The second section does not authorize a suit for the collection of debts in the Circuit Court; if, therefore, such suits are not included in and necessarily implied from the first section, there is no right under the Bankrupt Act to maintain suits for such purpose in any federal court.—*Goodall, Assignee, v. Tuttle*, vol. 7, p. 193.

#### 2d. District Courts.

##### Of Same District.

#### 142. Collection of Assets.

The right of the assignee to sue in formal manner in the District Courts is not expressly conferred, but it may be held to be included in and implied from the grant "to collect the assets," as that power could not be made effectual in any other way than by suit.—*Goodall v. Tuttle*, vol. 7, p. 193.

#### 143. Controversies between Assignees and Third Persons.

The District Courts have original jurisdiction of all cases and controversies between third persons and the assignees in bankruptcy as such.—*Bachman, Assignee, v. Packard*, vol. 7, p. 353.

##### Of Different Districts.

#### 144. To Collect Assets.

A suit may be maintained by an assignee in bankruptcy to collect the assets of the bankrupt in District Courts other than that where the proceedings in bankruptcy are pending.

As such power extends to the collection of *all* the assets, the right to sue cannot be confined to the district where the proceedings are pending, but must, in order to give full effect thereto, necessarily be held to extend to any district where a suit to collect the assets is necessary.—*Goodall v. Tuttle*, vol. 7, p. 193.

#### 145. For Property Transferred.

An assignee in bankruptcy may sue in the United States District Court, for a district other than that in which the petition was filed, against a certain party, to recover

back money paid in violation of the Bankrupt Act.—*Shearman, in error, v. Bingham et al.*, vol. 7, p. 490.

#### (B.) State Courts.

#### 146. Exercise of—subject to Legislation.

State tribunals are not amenable to Congress. They are established by a different sovereignty, which may at any time deny the use of its tribunals to entertain suits in favor of assignees in bankruptcy, and neither Congress or the federal courts could prevent it.—*Goodall v. Tuttle*, vol. 7, p. 193.

#### 147. Not prohibited.

Section 2d of the present United States Bankrupt Act does not preclude a State court from jurisdiction of an action by the assignee on a cause which accrued to the bankrupt. It is within the power of Congress in establishing a uniform system of bankruptcy, to provide a uniform rule on the subject of the limitations of actions, which rule must of necessity supersede all State legislation on the subject.—*Peiper v. Harmer*, vol. 5, p. 252.

#### 148. Priority of.

Where the State court first obtains possession of property and control of litigation, it has the right to finish proceedings before being interfered with by the Bankrupt Court, and if the assignee in bankruptcy has rights they will be protected.—*Appleton v. Bowles et al.*, vol. 9, p. 354.

#### 149. By permission of Bankrupt Court.

State courts may entertain suits by an assignee in bankruptcy where he resorts to said courts by the consent and concurrence of the Bankruptcy Court.—*Payson v. Dietz*, vol. 8, p. 193.

#### 150. Suit commenced after Adjudication.

The laws of Congress nowhere give to him power to become defendant to a suit in another court than the Bankrupt Court, commenced after the adjudication.—*In re Geo. W. Anderson*, vol. 9, p. 360.

#### 151. To avoid Transfers voidable by Bankrupt Act only.

An assignee in bankruptcy cannot maintain an action in the State courts to recover property transferred by the bankrupt while insolvent to a creditor, with a view to give



such creditor a preference over the other creditors.

Such a transfer is only forbidden by the Bankrupt Act.—It is not a fraud under the statute of the State, nor is it contrary to public policy or good morals.

The provisions in the Bankrupt Act in that regard are penal in their character, and the courts of the State will not exert their jurisdiction to enforce them.—*Bingham v. Clafin et al.*, vol. 7, p. 412.

#### 152. *Idem.*

State courts will not entertain jurisdiction of a bill in equity filed by an assignee to avoid a conveyance as void against the Bankrupt Law only.

State courts will not entertain jurisdiction to enforce a penalty created by the United States statute, or by the statute of any foreign state which has tribunals of its own to enforce it.—*Voorhees v. Frisbie*, vol. 8, p. 152.

#### 153. *Contra.*

An assignee in bankruptcy may sue in the State, as well as the United States courts, to recover property disposed of by the bankrupt, in fraud of the Bankrupt Act.—*Gilbert v. Priest*, vol. 8, p. 159.

#### 154. *Idem.*

An assignee in bankruptcy may sue in a State Court for the enforcement of any right vested in him by the Bankrupt Act, as for the recovery of property transferred in fraud of that act, within the six months prior to commencement of proceedings.

The State court, in passing upon claims of assignees in bankruptcy, is not proceeding under the Bankrupt Act, but simply recognizes the Bankrupt Act as the source of the assignee's title, in the same manner as it would if he derived his title from a deed or a contract.

The right of recovery of property transferred by an insolvent, given by Section 35 of the Bankrupt Act to the assignee, is in no sense a penalty. The transfer and title are simply declared void, hence the vesting of the title in the assignee.—*Cook v. Waters, Whipple et al.*, vol. 9, p. 155.

#### 155. *Of Suit Against Assignee.*

State courts have not jurisdiction of a suit by a person claiming an adverse interest against an assignee in bankruptcy. The

State court has no power over the assignee or the fund in bankruptcy, and could not therefore, in all cases, do *complete* justice.—*Voorhees v. Frisbee*, vol. 8, p. 152.

#### 156. *To Enforce Rights Given by State Law.*

An assignee may sue in the State courts, in actions at law and in equity, where the equity relied on is such as is recognized by the law of the State wherein the suit is brought, and not the mere creature of the statute.—*Voorhees v. Frisbee*, vol. 8, p. 152.

#### 157. *Generally, Limitation of Actions.*

An assignee may sue, or be sued, in the State courts, but Section 2 of the Act of 1867 limits the bringing of an action of this kind to two years from the time the cause of action accrued for or against such assignee.—*Cogdell v. Ezum*, vol. 10, p. 327.

#### (C.) *Subject of Action.*

#### 158. *Obtaining Lien After Adjudication.*

No lien can be acquired upon the property of the bankrupt by proceedings in a State court after the filing of a petition in bankruptcy, and an assignee is not bound to go into a State court to defend such a suit, the action being a nullity as to him.—*Stuart v. Hines et al.*, vol. 6, p. 416.

#### 159. *Protested Check.*

The payee of a check drawn on a bank by a depositor, who has on deposit in the bank sufficient to pay the check when presented, acquires by the presentation of the check and refusal of the bank to pay, a right of action against the bank that will pass to and may be enforced by his assignee in bankruptcy.—*Fourth Nat. Bank v. City Nat. Bank*, vol. 10, p. 44.

#### 160. *Surplus on Execution.*

Where an execution on final judgment has been levied by a sheriff prior to the commencement of proceedings in bankruptcy the possession of the sheriff cannot be disturbed by the assignee. The assignee is only entitled to claim the residue in the hand of the sheriff after satisfying the execution in his hands.—*Marshall v. Knox et al.*, vol. 8, p. 97.

#### 161. *Rejection of Claim.*

Where the District Court, on objection of the assignee, rejects a proof of debt, *Ordered*, the creditor should establish his



claim by suit against the assignee.—*Adams v. Meyers, Assignee*, vol. 8, p. 214.

#### 162. For Adjudication of Copartnership.

Bankrupt was a member of two copartnerships, and without notice to his other copartners, filed his individual petition in voluntary bankruptcy, showing in his schedules assets and liabilities of the two firms. He was adjudicated a bankrupt individually, and assignees were appointed, who petitioned that the court adjudge the two firms respectively bankrupt, as being insolvent, in order to the administration of their assets in the bankruptcy court.

The remaining copartners answered, denying the commission of any act of bankruptcy by either firm, and demanded a trial by jury.

*Held*, the assignees had properly instituted and could maintain the said proceedings.

The bankrupt could not be properly discharged unless the assets of the insolvent firm should be so administered.

If the respondents denied the insolvency of the firms, jury trial would be granted: but not being denied, the said firms would be respectively adjudged bankrupt.—*Grady et al. v. Hawthorne*, vol. 8, p. 227.

#### (D.) Practice in.

##### 1st. Pending Suits.

#### 163. Substitution as Plaintiff.

The first clause of the sixteenth section of the Bankrupt Act authorizes the assignee to originate an action in bankruptcy for the recovery of a debt due the bankrupt, and that the second and third clauses of the same section transmit the right to prosecute pending actions from the bankrupt to the assignee, and from one assignee to another, in case of death or removal. Hence the assignee must be substituted for the bankrupt in this case.—*In re B. F. Jones*, vol. 7, p. 506.

#### 164. Idem, in Supplementary Proceedings.

A recovered judgment in a certain suit prior to his being adjudged a bankrupt. This judgment was amended, after the adjudication and conveyance of A's property to the assignee, by order of the court in which the action was brought, so as to in-

crease slightly the amount of the original judgment.

A's assignee brought suit to recover on this judgment, but his right to maintain the action was denied on the ground that the judgment being entered subsequent to the assignment, was the property of the bankrupt.

*Held*, That the cause of action and original judgment were clearly antecedent to the application in bankruptcy, and the assignment to the assignee, and as such passed by operation of law to him, subject to all the rights of the bankrupt to have it altered and corrected.

That the right of the assignee to maintain this action does not depend on the instrument of assignment, as the Bankrupt Act of 1867 provides that all *choses in action*, all debts due, etc., together with the right to sue, shall, in virtue of the adjudication and the appointment of the assignee, be at once vested in such assignee.—*Frank Zantlinger v. F. I. Ribble, assignee in bankruptcy of John C. Deyerle*, vol. 4, p. 724.

#### 2d. In Appeals.

#### 165. United States Supreme Court.

Where an appellant in the United States Supreme Court becomes bankrupt, after his appeal taken, his assignee in bankruptcy, upon the production of the deed of assignment of the Register in Bankruptcy, duly certified by the clerk of the proper court, may, on motion, be substituted as appellant in the case.—*Herndon v. Howard*, vol. 4, p. 212.

#### 166. From Compulsory Award.

An assignee in bankruptcy may appeal from an award of arbitrators under the Compulsory Arbitration Law, without the payment of costs.—*In re Cooke & Co.*, vol. 10, p. 126.

#### 167. Idem.

An assignee in bankruptcy may appeal from an award of arbitrators under the Compulsory Arbitration Law without payment of costs, the adverse party having taken out the rule of reference.—*Moss v. Gritmann*, vol. 10, p. 132.

#### 168. Right to Prosecute.

An assignee in bankruptcy, or the bankrupt himself, may prosecute an appeal.—

- . *M. J. O'Neil v. George Dougherty*, vol. 10, p. 298.

3d. *To Enjoin Proceedings.*

**169. Enforcing Liens.**

After assignees are appointed, the petition for injunction should be filed by them.  
—*Bowie*, vol. 1, p. 628.

(E.) *Pleadings.*

. **170. Plenary Suit against Adverse Claimant.**

Where a party lays claim to a certain fund, the possession of the depositary is his possession, provided his claim is just and legal. Therefore, if the assignee in bankruptcy would divest him of the possession and control of the fund in question, he must do it by a suit at law or in equity, as provided in the third clause of the second section of the Bankrupt Act.—*Smith v. Mason*, vol. 6, p. 1.

**171. Idem.**

Strangers to proceedings in bankruptcy not served with process, and who have not voluntarily appeared and become parties to such a litigation, cannot be compelled to come into court under a petition for a rule to show cause, as the third clause of the second section of the said Act affords the assignee a convenient, constitutional, and sufficient remedy to contest every adverse claim made by any person to any property or rights of property transferable to or vested in such assignee.—*Smith v. Mason*, vol. 6, p. 1.

**172. Idem.**

The District Court has no authority, on a summary proceeding, to take property from the hands of one who has lawfully acquired possession, and claims an adverse interest to the assignee. Such proceedings must be by a regular suit at law or equity.  
—*Marshall v. Knox et al.*, vol. 8, p. 97.

**173. By Adverse Claimant against Assignee.**

An assignee in bankruptcy can proceed against an adverse claimant of property only by action at law or plenary bill in equity; but whether an adverse claimant may not proceed against an assignee by mere petition, *quære?*—*Ferguson et ux. v. Peckham, assignee, et al.*, vol. 6, p. 569.

**174. Trover.**

An assignee in bankruptcy may bring trover for property converted prior to his appointment as assignee, if done after the filing of the petition in bankruptcy. If the conversion was prior to the filing of the petition, he must sue in equity.—*Mitchell v. McKibbin*, vol. 8, p. 548.

(F.) *Defenses.*

**175. Usury.**

The assignee may set up any defense that the bankrupt himself could have done if bankruptcy had not intervened, and the defense of usury can be pleaded so long as any part of the debt for which the usury was paid, or agreed to be paid, remains unpaid, and the assignee may apply the usurious interest towards the extinguishment of the principal debt.—*Tiffany v. Lucas*, vol. 9, p. 245.

**176. Idem.**

The assignee can take advantage of usury, and the defense is good so long as any part of the principal debt remains unpaid.—*Prescott*, vol. 9, p. 385.

**177. Statute of Limitation.**

A bill in equity against an assignee and the bankrupt to recover real estate conveyed by the bankrupt in fraud of his creditors cannot be entertained unless brought within two years from the time the cause of action accrued against the assignee.—*Freeland et al. v. Holloman*, vol. 9, p. 331.

**178. When Bankrupt Estopped on Grounds of Public Policy.**

An assignee represents the rights of the creditors and each of them, as well as the bankrupt, and may therefore maintain or defend proceedings in regard to the property of the latter, which, on grounds of public policy or otherwise, he would not be allowed to.—*In re St. Helen's Mill Co.*, vol. 10, p. 414.

(G.) *Demand and Refusal.*

**179. Property Transferred in Fraud of Act.**

That on the trial of an action to recover property, or its value, transferred contrary to Section 35 of the Act, it is necessary to prove a demand and refusal, and if so, the

same should be alleged in the complaint.—*Lloyd Brooke, assignee, v. John McCracken*, vol. 10, p. 461.

(H.) *Subrogation.*

**180. Judgment Creditor.**

Where a creditor having a judgment against a bankrupt which is a lien upon his real estate, proves his debt in bankruptcy, and comes in upon the bankrupt's estate for the whole debt, the assignee in bankruptcy is entitled to be subrogated to the rights of the judgment-creditor as regards its lien upon the real estate.—*Wallace v. Conrad*, vol. 3, p. 41.

(I.) *Construction of Pleading.*

**181. Defrauding Creditors.**

But the allegation that goods were consigned to parties outside of the district in contemplation of bankruptcy, is sufficient as a charge of a removal from the district, and if done with a view of becoming bankrupt, and with the intent of keeping such goods from the assignee, is a sufficient charge that it was done to defraud creditors.—*Hammond v. Coolidge*, vol. 3, p. 273.

XIII. *Application to Court.*

**182. Sale of Perishable Property.**

An assignee desiring to sell property as perishable, or because the title is in dispute, must apply to the court by petition, and not to a Register.—*In re Graves*, vol. 1, p. 237.

**183. Idem, Encumbered Property.**

It is not the duty of an assignee to petition the court respecting the sale of encumbered property of bankrupt, unless he believes such sale will produce a surplus fund for the general creditors whom he represents.—*Mebane*, vol. 8, p. 347.

XIV. *Duties.*

(A.) *Generally*, p. 241.

(B.) *Accounting*, p. 242.

(C.) *Claims*, p. 243.

(D.) *Encumbered Property*, p. 243.

(E.) *Exemptions*, p. 245.

(F.) *Proofs of Debt*, p. 246.

(G.) *Rent*, p. 246.

(H.) *Returns*, p. 246.

(I.) *Sales*, p. 247.

(A.) *Generally.*

**184. Examination of Bankrupt.**

It is not necessary that the application of assignee for the examination of bankrupt should be under oath. A bankrupt may be called upon at any time to submit to an examination, and as the assignee is a *quasi* officer of the court, it is only necessary that the court should be satisfied of the *bona fides* of his application.—*In re McBrien*, vol. 2, p. 197.

**185. After Discharge.**

The assignee in bankruptcy has no right to examine the bankrupt under the provisions of Section 26 of the Bankrupt Act, after his discharge from his debts and liabilities provable under said act.—*In re Witkowski*, vol. 10, p. 209.

**186. To Inform Creditors.**

It is the duty of an assignee to disclose to the creditors, upon inquiry, and where it appears they are ignorant thereof, the main facts known to him relating to the condition and assets of the bankrupt estate.

Where he knows there is a large sum of money on deposit in a bank, belonging to the estate, against which the bank claimed and were purchasing set-offs, it is his imperative duty to state these facts to creditors inquiring concerning the value of their claims.

It is not a sufficient excuse that he could not give definite estimates as to what the estate would pay, or that he says he did not intend to mislead any one. He is presumed to intend the necessary consequence of his own acts, and the suppression of the existence of this large deposit must mislead creditors and affect their action. Nor is a sufficient answer or excuse that the books of the bankrupt could be examined by the creditors.

Where an assignee has failed in properly informing creditors in regard to their rights and the value of the assets, and the information has been suppressed in the interest of one class of creditors, it is the duty of the court to remove him.—*Perkins*, vol. 8, p. 56.

**187. Withholding Dividends.**

The creditors of A. and K. declared a dividend. R., one of the creditors, was

also a debtor of A., one of the members of the firm, which debt appeared on A.'s individual schedules.

The assignee had brought a suit in the State court to recover from R. the amount due the estate of A., which action is still pending.

On the refusal of the assignee to pay R. the amount of the dividend, a motion was made to compel payment.

*Held*, That the assignee could withhold the payment of the dividend to R., declared upon the net proceeds of the joint stock of A. and K., until the recovery or the final determination of the suit now pending.

That it is only when the claims of creditors are to be determined that the assignee must consider the estates of the firm and of the individual members separately.—*In re Atkinson v. Kellogg*, vol. 10, p. 535.

#### 188. To be Chary of Litigations.

Motion by assignee to be made a party to actions brought to recover possession of certain tobacco alleged to have been wrongfully taken and converted by defendant, afterwards declared bankrupt.

*Held*, The assignee should show some right to the property in controversy, in order to make him a party. Such conversion, by his principal, is of itself not a good reason for supposing he has right to the property in question. Motion denied.—*Gunther*, vol. 3, p. 730.

#### 189. To Contest Preferences.

The assignee in bankruptcy represents the whole body of creditors, and it is his right and duty to contest the validity of any mortgage by which one creditor has obtained a preference over another.—*In re Metzger*, vol. 2, p. 355.

#### 190. To Represent all Creditors.

The assignee in bankruptcy of a manufacturing corporation having sold at auction in one parcel, for a greatly inadequate price, two separate mills, each completely furnished with machinery; a hotel; a store; twenty dwelling houses, each susceptible of separate occupation; and sundry vacant lots, not necessary to the use of the mills, subject to a mortgage on the whole, and the property having been purchased at such sale by a combination of

certain creditors of the corporation, while other creditors were ignorant of the time and place, and even of the fact of the contemplated sale; and such ignorance was known and acted upon by the agent for the purchasing combination, the sale was set aside on the application of such other creditors.—*The Troy Woolen Co.*, vol. 4, p. 629.

#### 191. Idem. Secured and Unsecured.

An assignee cannot make up, out of the general funds of an estate, any difference between the net proceeds of the sale of the mortgaged property, and the amount stated by the mortgage to be due the mortgage creditors.—*Purcell & Robinson*, vol. 2, p. 22.

#### 192. Recording Assignment.

It is not essential to the title of the assignee that the assignment to him by the Register should be recorded within six months from its date. The title of the assignee takes effect by relation, from the commencement of the proceedings in bankruptcy, and the recording is not required for the mere purpose of giving notice to purchasers.—*Davis v. Anderson et al.*, vol. 6, p. 145.

#### (B.) Accounting.

#### 193. Forms for.

Form 35 is the account for the assignee to render where no assets have come to his hands; and where assets have come thereto, Forms Nos. 37 and 38 constitute the account, and the Register has authority to order the assignee to submit and file his account.—*John Bellamy*, vol. 1, p. 64.

#### 194. By Voluntary Assignee.

The accounting by the voluntary assignee should be, under the decree, to the assignee in bankruptcy. There should be no subsequent account in a proceeding under State legislation in a court of the State, unless some extraordinary reason requires a distribution under the laws of the State for the benefit of the general body of the creditors.—*Burkholder et al. v. Stump*, vol. 4, p. 597.

#### 195. Professional Services Included.

If an assignee has incurred and paid expenses for professional services and clerk hire, or demands compensation beyond what he is entitled to by Section 28 of the

Bankrupt Law, he must accompany his final account with a separate and distinct application for an allowance of the charges, and submit to such examination and furnish such proofs as may be required touching the necessity of such disbursements and services.—*In re B. B. Noyes*, vol. 6, p. 277.

#### 196. *Idem.*

Sums paid by an assignee to his counsel should be included in his account and submitted to the meeting of the creditors, and audited as a part of the assignee's accounts.

Under special circumstances, on notice to all creditors who have proved their claims, the court may order an inquiry as to an assignee's or an attorney's account, before a meeting of creditors, but the practice is not to be encouraged.

In this case, where all of the assignee's attorney's bill, except four items amounting to about one-fifth the bill, had been presented to a third meeting of the creditors, and no objection made thereto, and as to these four items the court had ordered a reference, and the Register reported in favor of their payment if the assignee made no objection, still the court refused to pass upon them, but ordered a general meeting of the creditors to be called, for them to act thereon.—*In re C. C. Hubbel and E. A. Chapel*, vol. 9, p. 523.

#### 197. Auditing.

A Register has power so to audit and pass the accounts of an assignee at a second meeting called only under the 27th Section of the act, as to bind the creditors, even though no notice had been given under the 28th Section or otherwise, that such accounting would be had, and though such accounts be not filed until the hour of the meeting. If the creditors omit to attend such meeting or fail to object to such accounts, it is the duty of the Register to direct their payment.

The provision in Section 28, for auditing and passing the accounts of the assignee at the meeting for the final dividend, cannot be regarded as in any manner implying that such accounts of the assignee as are presented at the second general meeting of creditors shall not then be audited and

passed by the Register.—*In re Clark & Binger*, vol. 6, p. 197.

#### 198. Notice of.

Proper notice must be given by the assignee to creditors, and the Register should see that this duty is performed. The non-performance of it renders the bankrupt liable to lose his right to a discharge.—*Bushy*, vol. 8, p. 685.

#### 199. Objections to.

Creditors are not bound to object to the assignee's account save at a meeting called pursuant to the provisions of the 28th Section of the act.—*In re Abraham B. Clark*, vol. 9, p. 67.

#### (C.) Claims.

#### 200. When taken by Mistake.

If the assignees are satisfied that property taken by them did not belong to the bankrupt, they should return it without delay; if, however, they are in doubt, the claimant must seek redress by the appropriate remedy in the courts of the State.—*In re Thomas Noakes*, vol. 1, p. 592.

#### (D.) Encumbered Property.

#### 201. Sale subject to specified Liens.

Where an assignee in bankruptcy applied to the United States District Court for leave to sell the bankrupt's real property, subject to certain specified liens, and an order was made accordingly, and after the sale the assignee reported to the court that he had sold the property free from all other liens except those named,

*Held*, That the lien of a *bona fide* judgment-creditor, who was not named in any of the proceedings, was not destroyed, for the reason that the said court did not ratify such sale as "free from all liens except those mentioned," although confirming the report made by the assignee.—*In re McGilton et al.*, vol. 7, p. 294.

#### 202. Laches in enjoining Sale.

An assignee in bankruptcy applied to the United States District Court, and obtained an injunction to restrain the sale of property under the decree of foreclosure in a mortgage, after the proceedings had reached a stage where, substantially, all the expenses except those which would attend the sale of the property, had been



incurred. Sometime thereafter he applied for leave to dissolve the injunction and sell the property.

*Held*, That the petition must be dismissed, with costs to the assignee, for the reason that he had not applied, at the commencement of the foreclosure suit, for a stay of proceedings. Injunction dissolved.—*In re Brinkman*, vol. 6, p. 541.

### 203. Cost on Dissolved Attachments.

The assignee in bankruptcy must recognize as a preferred claim any valid lien, even the costs of an attachment, if such costs are a lien by the State law.—*Gardner v. Cook*, vol. 7, p. 346.

### 204. For Custody of Property.

The costs and charges against a bankrupt for care or custody of his property prior to the filing of a petition in bankruptcy, by or against him, under contract with him, express or implied, are debts of his, provable against his estate as debts simply, not as preferred claims. For care and custody of property from the date of proceedings in bankruptcy to the taking possession thereof by the messenger or assignee, the assignee is accountable as for expenses of like kind incurred by him after his appointment, having regard, of course, to their necessity and utility, and the reasonableness or exorbitancy of the charges therefor.—*Gardner v. Cook, assignee*, vol. 7, p. 346.

### 205. Goods seized on Execution.

A levy was made by the sheriff on certain goods of bankrupt after the date of filing his petition in bankruptcy.

*Held*, That the title being vested in him, the assignee must make sale and deposit proceeds of such goods, subject to whatever claims may be determined by the court to be upon them.—*G. W. Pennington, assignee James F. Stewart, v. Sale & Phelan et al.*, vol. 1, p. 572.

### 206. When debt Disputed.

When, however, the debt claimed by the creditor is not admitted by the assignee, and cannot be agreed between them, then the assignee should resort to the proper court to ascertain it, and for a sale of the property at the same time.—*McClellan*, vol. 1, p. 389.

### 207. Idem.

An assignee in bankruptcy petitioned the Bankruptcy Court to enjoin mortgagees from proceedings in the State court, commenced after the adjudication in bankruptcy, to have a Receiver appointed, and to foreclose a mortgage on certain real property of the bankrupt in the possession of the assignee as assets; and asked that the mortgage might be declared void, the land sold free from encumbrance, and proceeds distributed.

*Held*, That the Bankruptcy Court has jurisdiction, and that the proceeding by petition was regular. The mortgagees would be enjoined as prayed, until determination of the issue of the validity of the mortgage raised by the petition.—*In re The Kerosene Oil Company*, vol. 2, p. 528.

### 208. Redemption after Law-day.

Upon general principles of equity-jurisprudence, the mortgagor of chattels has an equity of redemption therein. The statutes of Massachusetts, which provide for a tender of performance, after condition broken, do not take away this right in equity, and it may be enforced in the Circuit Court of the United States, when the court has jurisdiction of the parties or the subject matter, and this, without a previous tender of performance.

An assignee of a bankrupt may bring such a bill in the Circuit Court.

The District Court in bankruptcy may authorize the assignee to sell mortgaged property discharged of the incumbrances, and the mortgagees will then have their lien transferred to the proceeds of sale.—*Foster et al. v. Ames et al.*, vol. 2, p. 455.

### 209. May Sell without Order of Court.— Subject to Lien.

The 20th Section of the Bankrupt Act confers authority on the assignee to make a sale of incumbered property without any order of court.—*In re J. McClellan*, vol. 1, p. 389.

### 210. Order Necessary to Sell Free of Liens.

The District Court in bankruptcy may authorize the assignee to sell mortgaged property discharged of the incumbrances, and the mortgagees will then have their



lien transferred to the proceeds of sale.—*Foster et al. v. Ames et al.*, vol. 2, p. 455.

**211. Ought not to Interfere when Incumbered Over Value.**

It is not the duty of an assignee to petition the court respecting the sale of incumbered property of bankrupt, unless he believes such sale will produce a fund for the general creditors whom he represents.—*Mebane*, vol. 3, p. 347.

**212. Idem.**

It is not necessary for the assignee to take any proceedings whatever in regard to personal property of the bankrupt, so heavily mortgaged that it will not sell for enough to pay off such incumbrance, and the assignee has nothing to do but to designate the bankrupt's exempt property under Section 14 of the Bankrupt Act of 1867.—*In re Hugh G. Lambert*, vol. 2, p. 426.

**213. Investigation of Claims.**

A creditor holding collaterals is entitled to have his claim referred to the Register for investigation, and the assignee is not justified in rejecting it until proofs have been taken and the matter fully inquired into.

**214. Purchase-money on Rescission.**

Where the general assignee of the bankrupt made certain conveyances of the real estate, the administrators of the grantee made application to have the amount paid on the contract of sale refunded, which was denied, for the reasons that the contract of sale was not delivered up to be canceled, and further, that there was a failure to show that the transaction with decedent was made in good faith by the general assignee.—*In re Jacob H. Mott, Jordan Mott*, vol. 1, p. 223.

*(E.) Exemptions.*

**215. Not Allowed by Way of Substitution.**

An assignee has no right, where bankrupt's property has been seized and sold under execution and distress for rent, to allow money, the proceeds of debts due to the bankrupt, for the purpose of making good the property that would have been exempted had it not been sold.—*In re Lawson*, vol. 2, p. 54.

**216. Failure to Sell When Disallowed.**

Where bankrupts claimed under the State law, and the assignee attempted to set apart homesteads out of their real estate, and the creditors excepted to the assignee's report in that respect,

*Held*, That the bankrupts were not so entitled, and a failure or refusal by the assignee to sell the real estate in question for benefit of creditors makes him responsible.—*Jackson v. Pearce*, vol. 2, p. 508.

**217. Not Necessary to be Unincumbered.**

In setting apart for the use of the bankrupt exempt property, the assignee is not obliged to designate articles on which there is no lien. An assignee is chargeable personally with costs of the proceedings where he files a petition to have an attachment dissolved which covers property that has already been set apart by him as exempt.—*In re Preston*, vol. 6, p. 545.

**218. Articles to be Selected.**

The assignee must select the property to be exempt under the Bankrupt Law, and should refuse to set apart mere articles of luxury, as gold watches, or pianos, etc.—*In re James H. Hafer & Bro.*, vol. 1, p. 547.

**219. Idem. Discretion of.**

If the bankrupt should select under the State law one hundred dollars worth of property in real estate, he may receive in addition thereto furniture and other necessities of the value of five hundred dollars, but the allowance of this amount would rest in the sound discretion of the assignee.—*In re Thomas Noakes*, vol. 1, p. 592.

**220. Money.**

The assignee in bankruptcy may designate a sum of money as necessary under Section 14 of the statutes.—*In re Hay et al.*, vol. 7, p. 344.

**221. Necessaries. Real Estate. Money.**

Real Estate cannot be set apart to a bankrupt as exempt property under the head of "articles or necessities." Money can be allowed by the assignee, when the exigencies of the bankrupt seem to require it, for the temporary subsistence of his family.—*In re Thornton*, vol. 2, p. 189.

**222. Report of.**

The rule requiring the assignee to make a report of exempted property within

twenty days, is to receive such a construction as to prevent injustice to the bankrupt, and it may be extended by the court and leave granted to the assignee to make a further report.—*In re David Shields*, vol. 1, p. 608.

### 223. *Idem*. Exceptions to.

Where creditors claim that unauthorized exemptions are exempted to be made to the bankrupt by the assignee, they must except under general order nineteen to his report within the requisite time, as respects household furniture, necessary articles, etc., but as to real estate the attempted exemption is void, no title there-to passes from the assignee, and creditors need not except to the report, but only to the account of the assignee, and hold him responsible for any deficiency.—*In re Elizur Gainey*, vol. 2, p. 525.

### 224. *Idem*. Real Estate.

It was unnecessary to except to the report of the assignee. Exception to his account, for omission to charge himself with value of said real estate, would suffice.—*In re Jackson & Pearce*, vol. 2, p. 508.

### 225. Effect of Prior Application to Sell.

The right to the homestead exemption is not lost by the delay of the husband to claim it until an order is applied for by the assignee in bankruptcy to sell the property for the benefit of the estate.—*Bartholomew, assignee, v. West et al.*, vol. 8, p. 12.

### (F.) Proofs of Debt.

#### 226. Return to Register.

When the assignee has made his register he must return the proofs of debt to the Register, and they must be filed in the clerk's office with the other papers in the case, under general order number seven.—*Anon.*, vol. 2, p. 68. See, also, *Anon.*, vol. 1, p. 219.

#### 227. Cannot Waive.

Where the claim has been adjusted between the insured and the company, while solvent, it may be proved in bankruptcy, as an ordinary debt, irrespective of the "year clause." But where not so adjusted previous to the insolvency of the company, the insured must not only furnish the "proof of loss" in the mode and manner pointed out in the policy, but must, in ad-

dition, file his proof of debt with the assignee in bankruptcy within the time limited by the policy. An assignee in bankruptcy has no power to waive formalities of proof.—*Firemen's Insurance Company*, vol. 8, p. 128.

### (G.) Rent.

#### 228. Where Premises Retained as Place of Sale.

Where the assignee held a store for the purpose of keeping and storing the goods of the bankrupt until they could be sold,

*Held*, That the rent for such premises must be paid by the assignee, and charged as part of his expenses.—*In re Fred B. Walton et al.*, vol. 1., p. 557.

#### 229. Electing to Accept Lease.

It is well settled that until an assignee in bankruptcy elects to accept a lease as assignee, he does not become liable for rent accruing after the adjudication, hence, when an assignee occupies the leased premises independently of the lease, and pays for such occupation, this occupation is not evidence of such an election.—*In re Ten Eyck & Choate*, vol. 7, p. 26.

#### 230. Where Property on Premises.

When sufficient goods remain on the premises occupied by the bankrupt to satisfy the rent on distress, the assignee should pay the full amount due up to the time of his surrender to the landlord.—*Longstreth, assignee, v. Pennock, executor, et al.*, vol. 7, p. 449.

### (H.) Returns of.

#### 231. When "no Assets."

An assignee must make his return under Form No. 35 when requested to do so by the bankrupt, when in fact he has neither received nor paid out any moneys, even though he may have reason to believe that he will thereafter receive money as the proceeds of assets of the estate.—*In re William H. Hughes*, vol. 1, p. 225.

#### 232. Form of.

Form 35 is the account for the assignee to render where no assets have come to his hands, and where assets have come thereto, Forms Nos. 37 and 53 constitute the account, and the Register has authority to order the assignee to submit and file the same.—*In re John Bellamy*, vol. 1, p. 64.

**233. Certificate of Creditors.**

An assignee is an officer of the court and acts subject to its orders. The bankrupt is entitled to a certificate of the assignee giving the names and residence of the creditors who have proven their claims, as per form, in order to enable him to move the court for an order to show cause why he should not be discharged, etc. The Register has the power to make such an order, and it is the duty of the assignee to obey it. Motions to compel an assignee to do his duty are properly made before the Register.—*In re Blaisdell et al.*, vol. 6, p. 78.

**(I.) Sales.****234. Controlling Discretion of Court.**

An order directing the sale of property incumbered with valid liens exceeding its value will be set aside on petition for review as an improper exercise of the discretion granted the District Court—*Dillard*, vol. 9, p. 8.

**235. Incumbered Property without Order—Subject to Liens.**

Assignee may sell incumbered property in his possession without petitioning the court, or without an order of the court, but in so doing he sells subject to lawful incumbrances. He can convey no higher or better interest than he took.—*Mebane*, vol. 3, p. 347.

**236. Without Order Conveys Title.**

Where an assignee sells without an order of court, the purchaser will be entitled to the property sold, and its rents and profits from the date of the sale, and need not await a confirmation by the court.—*Hull v. Scovel*, vol. 10, p. 296.

**237. By Order of Court Free of Liens.**

When the interests of all parties seem to demand it, the court is authorized to direct the assignees to sell the real estate of a bankrupt corporation, free from all liens, except the existing and recorded mortgages.—*In re National Iron Co.*, vol. 8, p. 422.

**238. To Ascertain Value of Security.**

The 20th Section of the Bankrupt Act confers authority on the assignee to make a sale of incumbered property without any order of court.

When, however, the debt claimed by the

creditor is not admitted by the assignee, and cannot be agreed between them, then the assignee should resort to the proper court to ascertain it, and for a sale of the property at the same time.—*In re J. McClellan*, vol. 1, p. 389.

**XV. Liability.****239. For Taking from Adverse Claimant by Summary Proceedings.**

Where the District Court, at the petition of the assignee, issued a rule to show cause against a stranger and the sheriff, who had seized the goods ten days prior to the commencement of proceedings in bankruptcy, to satisfy a lien for rent on a provisional warrant of seizure, and upon the return of the rule delivered the goods to the assignee, and had them sold,

*Held*, The order was null and void, and the assignee in bankruptcy, acting under the order, was a mere trespasser.—*Marshall v. Knox et al.*, vol. 8, p. 97.

**240. Not Subject to Garnishment from State court.**

A and B were partners, and were sued individually, on certain firm promissory notes by C.

B had become a non-resident of the State, and C caused an attachment to be issued against him.

A owed B money, but A had been declared a bankrupt by the United States District Court. C garnished the assignee in bankruptcy.

*Held*, That this court had no jurisdiction, but that a receiver of B's effects should be appointed by the court, who would represent B in the bankruptcy distribution, and would receive from A's assignee all moneys coming to B, and then account to the State court for them.—*Jackson v. Miller*, vol. 9, p. 143.

**241. Neglecting Directions Asked.**

Where an assignee applied to the court for directions, and a reference is ordered to obtain the necessary information upon which to base the directions, and the assignee fails to attend the reference, but acts independently, he will be held to the strictest account. An assignee cannot be removed except upon application made for that purpose under Section 18, General

Order 23, and Form 41.—*In re Schapter*, vol. 9, p. 324.

#### 242. Effect of Accepting Lease.

If the assignee in bankruptcy elects to accept a lease held by the bankrupt, he renders himself liable on behalf of the estate for rent from the date of the petition.—*In re Laurie, Blood & Hammond*, vol. 4, p. 32.

#### 243. Cost in Actions Brought.

Where a bill is filed by an assignee without sufficient cause, yet if the circumstances surrounding the transactions complained of are not sufficiently clear to raise an imputation on the good faith of the assignee in prosecuting the suit, the cost will be charged against the estate of the bankrupt in his hands.—*Coxe v. Hale*, vol. 8, p. 562.

#### 244. Idem. State Court.

An assignee in bankruptcy being the trustee of an express trust, is not personally liable for cost in State court, notwithstanding his being an officer of another court prevents the funds in his hands being attached by the State court.—*Merrick G. Reads et al., Appellants, v. Euclid Waterhouse et al., Respondents*, vol. 10, p. 277.

#### 245. Recording Assignment.

When an assignee has formally accepted his appointment as assignee, and given bonds, his neglect to take into his own custody the deed of assignment and have the same recorded when he knew that no property passed by the assignment, is no ground for withholding a discharge.—*Pier-son*, vol. 10, p. 107.

#### 246. Failure to Sell Property.

Where bankrupts claimed under the State law, and the assignee attempted to set apart homesteads out of their real estate, and the creditors excepted to the assignee's report in that respect,

*Held*, That the bankrupts were not so entitled, and a failure or refusal by the assignee to sell the real estate in question for benefit of creditors, makes him responsible.

*Semble*, That it was unnecessary to except to the report of the assignee, exception to his account, for omission to charge himself with value of said real estate, would suffice.—*Re Farish*, 2 B. R., 62; *In re Jackson & Pearce*, vol. 2, p. 568.

#### 247. Cannot be Collaterally Attacked.

The acts of an assignee in bankruptcy cannot be collaterally attacked in a State court; and the court will presume he fulfilled all the prerequisites required of him by the Bankrupt Law, previous to selling the bankrupt's property.—*Morris v. Swartz*, vol. 10, p. 305.

#### 248. Not bound by Litigation to Discharge.

Where bankrupt's discharge refused, on certain grounds, subsequently the assignee in bankruptcy sued the transferee of the property, in the State court of Pennsylvania, setting up in substance the same facts as alleged in the specification, the transferee sought to enjoin the assignee on the ground that the case was "res adjudicata," and on the further ground, that the suit was not commenced within two years, etc.

*Held*, It is not proper to try the merits of the question in this summary way, but the party will be left to the decision of the State court in a final hearing, with all the evidence before it, that the former proceeding was "res inter alios acta" and in no way binding upon the assignee; that the court will only restrain an assignee from suing where a clear case is made out of the assignee exceeding his power, or using it unreasonably. This is not such a case.—*In re Penn et al.*, vol. 8, p. 93.

### XVI. Rights.

#### 249. Against Receiver, State Court.

Injunction granted restraining the State court receiver from disposing or interfering with the property of the corporation, and from setting up and asserting as against the assignee in bankruptcy any title to or right of action for any of said property, and enjoins, pending this action, until final decree, from doing any acts to carry or effectuate the trusts purporting to be created by his appointment as receiver. Assignee appointed receiver on giving a stipulation to charge no commissions on such assets of the receivership as shall pass from the State receivership to the trust represented by the assignee of the bankrupt.—*Platt, Assignee, v. Archer*, vol. 6, p. 465.

**250. Rights of Bankrupt in Absence of Fraud.**

Assignees, except in cases of fraud, take only such rights as the bankrupt had, and could himself claim at the time of his bankruptcy.—*In re George H. Arledge*, vol. 1, p. 644.

**XVII. Compensation.****251. Employing Auctioneer.**

An assignee must obtain leave of the court before employing an auctioneer. If he does so without leave he must show the necessity for such employment, and the reasonableness of the charges, before it will be allowed him.—*In re Sweet*, vol. 9, p. 48.

**252. Per Diem Allowance.**

An assignee, to entitle himself to the *per diem* allowed by Section 17 of the act, must not only show he actually spent the number of days in attention to the business of his trust, but must also show the necessity for such attention.—*In re Jones*, vol. 9, p. 491.

**253. Professional Services.**

No charges for professional services of counsel to assignees will in general be allowed, where the services were rendered prior to the appointment of the assignees.—*In re The New York Mail Steamship Company*, vol. 2, p. 423.

**254. Idem and Clerk Hire.**

An assignee is not at liberty to charge the assets of the estate in his hands for professional and clerical services rendered him in the execution of his trust, until the same shall have been first duly allowed by the court.

Before incurring expenses for professional services and clerk hire, an assignee must apply to the court for proper authority; if, however, he has incurred and paid such expenses, or demands compensation beyond what he is entitled to by Section 28 of the Bankrupt Law, he must accompany his final account with a separate and distinct application for an allowance of the charges, and submit to such examination and furnish such proofs as may be required touching the necessity of such disbursements and services.—*In re B. B. Noyes*, vol. 6, p. 277.

**XVIII.—Removal.****255. Preliminary to Order to Show Cause.**

Before the court can take action on the

failure of an assignee in bankruptcy to comply with the requirements of General Order No. 28, the same must be shown to it by at least *prima facie* evidence.—*Goodwin*, vol. 3, p. 417.

**256. As a Preventive Measure.**

Where it is deemed advisable to remove an assignee on account of peculiar relations existing between him and the bankrupt, but there is no evidence of any breach of his trust, he ought to be fully protected, and his cost paid by estate.—*Mallory*, vol. 4, p. 153.

**257. Irregularity as to Funds Received.**

An assignee who fails to deposit funds in his hands belonging to the estate of which he is the assignee, as required by the rules of court; who suffers the foreclosure of a mortgage, neglecting an opportunity to purchase it at less than its face; is guilty of similar neglect in regard to a judgment; pays money out of the estate to satisfy the judgment after a levy by the Sheriff; pays seven per cent. interest while he is loaning moneys belonging to the estate at six per cent., and also fails to comply with the directions of the Register, as required by the Bankrupt Act and rules of court, will be required to show cause why he should not be removed from his trust.

Register directed to employ counsel to represent the estate of the bankrupt, at the hearing of the order to show cause.—*In re Price*, vol. 4, p. 406.

**258. On Petition, Majority, Number, and Value of Creditors—Discretionary.**

A majority in number and value of the creditors petitioned the court to appoint a meeting, that a vote might be taken upon the removal of the assignees. At the meeting the requisite majority voted for their removal, and reported their action for the consent of the court, which decided that it could exercise judicial discretion in the matter, notwithstanding the action of the creditors; and further, that it is not the intention of the United States Bankrupt Act of 1867, that the majority should have absolute control over the rights and interests of the minority, and that under the peculiar circumstances of the case the assignees ought not to be removed.—*In re Dewey*, vol. 4, p. 412.



**259. Stirring up Litigation.**

A petition was filed against an assignee in bankruptcy to have him removed for the reason that he attacked two mortgages upon the bankrupt's property without sufficient cause, and that he delayed a sale of the property for the purpose of obtaining the rents in order to spend them in litigation.

*Held*, That the assignee was fully justified in his attack upon the mortgages, and that there was no evidence to show that he ever collected any rents, or how much he had spent in litigation.—*In re Sacchi*, vol. 6, p. 398.

**260. On Petition Sole Creditor.**

On a petition to the Circuit Court for the review of an order of the District Court denying the application for the removal of an assignee,

*Held*, That inasmuch as the petitioner for review has become the sole creditor, an order should be made that the assignee convey the estate of the bankrupt to such assignee as the petitioner and the bankrupt may name, or if they do not agree the matter be referred to the Register, the present assignee to retain all moneys collected by him until his just allowance for commissions and expense is settled by the District Court.—*In re Sacchi*, vol. 6, p. 497.

**261. Combining with a Class of Creditors.**

Where an assignee has failed in properly informing creditors in regard to their rights and the value of the assets, and the information has been suppressed in the interest of one class of creditors, it is the duty of the court to remove him.

On a revisory petition to the Circuit Court, the proper practice is to direct the District Court to remove the assignee and to appoint some other competent person in his place.—*In re Perkins*, vol. 8, p. 56.

**262. Notice of Application for.**

When an assignee has been chosen by creditors under the first warrant, notice of the application to remove him should be given, so that all the creditors who have proved their debts, may be heard in such application.—*In re John S. Perry*, vol. 1, p. 220.

**263. To set aside Appointment. Hearing.**

A motion on the part of the bankrupt to set aside the appointment of assignee can

only be entertained by the district judge upon notice, and not by the Register.—*In re Edward S. Stokes*, vol. 1, p. 489.

**264. Substitution of Trustee.**

After an assignee has been appointed, at a subsequent meeting of creditors, they may make an arrangement by trust-deed to have assignee removed and a trustee appointed in his stead.—*In re Jones*, vol. 2, p. 59.

**265. Form of Petition.**

If the creditor, after proving his claim, wishes to have the assignee already appointed removed, he can petition to the court in accordance with Form No. 40.—*In re James Carson*, vol. 5, p. 290.

**266. Error through Improper Legal Advice.**

A petition for the removal of an assignee was filed, charging collusion with his brother, incompetency, and involving the estate in unnecessary litigation. The court held that there was a failure to prove the first two charges, and that in regard to the third, if he has erred through erroneous legal advice, it may be cause for ordering him to employ other counsel, but not necessarily for his removal.—*In re Blodget & Sanford*, vol. 5, p. 472.

**267. Failing to Preserve Property.**

A petition for the removal of an assignee alleged, among other things, that he had neglected to take proper measures to secure the bankrupt's property; had, under the advice of his counsel, refused to pay taxes on the bankrupt's real estate, and allowed it to be sold to pay the same.

*Held*, That the allegations of the petition were duly proven, and gross neglect of duty on the part of the assignee shown.

Order entered removing the assignee, and directing him to pay out of his own funds, within twenty days, the cost of presenting and prosecuting the petition for his removal.—*In re Morse*, vol. 7, p. 56.

**268. Form of Application for.**

Though the facts disclosed in a case may justify the removal of an assignee, he cannot be removed except upon an application made for this purpose, under Section 18, General Order 23, and Form No. 41.—*In re Samuel Schapter*, vol. 9, p. 324.



**269. Discharge.**

When an assignee has formally accepted his appointment as assignee, and given bonds, his neglect to take into his own custody the deed of assignment and have the same recorded, when he knew that no property passed by the assignment, is no ground for withholding a discharge.—*In re Pierson*, vol. 10, p. 107.

**ASSIGNMENT.**

See ACKNOWLEDGMENT,  
ACT OF BANKRUPTCY,  
COMMENCEMENT OF PROCEED-  
INGS,  
DISCHARGE,  
EVIDENCE,  
FRAUDULENT ASSIGNMENT,  
" CONVEYANCE,  
" PREFERENCE,  
MUTUAL DEBTS,  
REASONABLE CAUSE,  
RECORD

**ASSIGNMENT—**

- I. *By Creditor*, p. 251.
- II. " *Register*, p. 251.
- III. " *Bankrupt*, p. 251.

**I. By Creditor.****1. For Purposes of set-off.**

A creditor of an insolvent who has reasonable ground to believe him to be such, can assign his demand to a debtor of the insolvent whose debt is not yet payable, so as to enable the latter to off-set the demand so assigned to him against the debt due from him to the insolvent, the latter debt having become due and payable at the time the offset is claimed.—*In re City Bank of Savings, Loan and Discount*, vol. 6, p. 71.

**II. By Register.****2. Disputed Property.**

A Register has the right to convey the estate to the assignee when there is "no opposing interest," although the title to the property is in dispute.—*In re Wylie*, vol. 2, p. 187.

**3. Execution of.**

An assignment executed to the assignee by the Register, there being no opposing interest, does not require to be proved before a clerk of the Superior Court, or his certificate to prepare it for registration.—*Neale*, vol. 3, p. 177.

**III. By Bankrupt.**

- (A.) *Equitable*, p. 251.
- (B.) *Validity*, p. 251.
- (C.) *Relation back*, p. 252.
- (D.) *Effect of*, p. 252.
- (E.) *As an Act of Bankruptcy*, p. 253.
- (F.) *Setting aside*, p. 255.

**(A.) Equitable.****4. Where Loan Made on Agreement for.**

Where a debtor agreed to insure property on which a loan was effected, the fact that the policies were not regularly assigned makes no difference, as in equity the assignment is executed the moment the insurance is effected; nor is the case altered on account of a clause in the said deed allowing the insurance company to be selected by the party loaning the money.—*In re Sands Ale Brewing Company*, vol. 6, p. 101.

**(B.) Validity.****1st. Valid.****5. Twelve Months prior.**

An assignment made *bond fide*, twelve months prior to the filing of the petition for bankruptcy, is good against the assignees of bankrupts; the assignees, except in cases of fraud, take only such rights as the bankrupt had, and could himself claim at the time of his bankruptcy.—*In re George H. Arledge*, vol. 1, p. 644.

**6. Under New York State Law.**

A general assignment by insolvent debtors under New York State Law, for the benefit of creditors untainted by fraud as against any creditors or the Bankrupt Act, is valid, and the property will not be turned over to the assignee in bankruptcy.—*John Sedgwick, Assignee, etc., v. James K. Place et al.*, vol. 1, p. 673.

**7. State Law.**

A voluntary assignment by a debtor under the insolvent law of the State is valid, although the United States Bankrupt Act was in existence and applicable to the case at the time of the assignment.—*In re George A. Hawkins et al.*, vol. 2, p. 378.

**8. Of Lease.**

A made a lease for a term of years of a certain hotel owned by him, and assigned and transferred this lease to a creditor to

secure a debt due him. A was subsequently adjudged a bankrupt.

*Held*, That the assignee in bankruptcy must take the estate subject to the lease, and that the law will recognize the assignment and protect the creditor as to his rights in the leased property.—*Daniel F. Meader et al. v. R. D. Everett, Assignee of L. H. Clark*, vol. 10, p. 421.

#### 9. Of Policy of Insurance.

Transfer to assignee being by operation of law, does not avoid the policy, and the assignee is entitled to recover the insurance money.—*Starkweather, Assignee of Wells, v. The Cleveland Ins. Co.*, vol. 4, p. 341.

#### 2d. Invalid.

#### 10. Conditional on Signing Composition.

When an assignment was made by bankrupt of lands in Florida, for the benefit of such of his creditors only as should sign a compromise agreement,

*Held*, Void as against assignee in bankruptcy.—*Broome*, vol. 3, p. 444.

#### 3d. Validation.

#### 11. Dismissal of Proceedings.

If assignments of policies of insurance belonging to a bankrupt prior to his adjudication are valid, they can be maintained as against the assignee to be appointed in bankruptcy proceedings, and if they are not legal and binding, they should not be made so, as against non-assenting creditors, by the dismissal of proceedings after the expiration of the time allowed to dissenting creditors to commence proceedings in order to avoid a preference, has elapsed.—*In re Bush*, vol. 6, p. 179.

#### (C.) Relation back.

#### 12. Possession of Bankrupt.

Where property mortgaged remains in the possession of the bankrupt at the date of the commencement of proceedings in bankruptcy, the possession of the bankrupt of the mortgaged property was, after the appointment of the assignee, the possession of the assignee, and its removal by the mortgagee without assignee's knowledge or consent, was unlawful.—*Rosenberg*, vol. 8, p. 130.

#### 13. By Operation of Law.

The assignment of the bankrupt's property will, by operation of law, relate to the

commencement of proceedings in bankruptcy, uncontrolled by any mistake in the Register in stating the time from which the deed should operate.—*In re Pierson*, vol. 10, p. 107.

#### 14. In Involuntary Cases Doubted.

Sections 14 and 42 of the Bankrupt Act compared, and whether the assignment in an involuntary case would relate back to the time of instituting the proceedings in bankruptcy by the adverse creditor, so as to affect the rights of third persons, doubted.—*Lenihan v. Haman et al.*, vol. 8, p. 557.

#### (D.) Effect of.

#### 1st. On Discharge.

#### 15. With intent to Delay or Hinder.

A trader being and knowing himself to be insolvent, made an assignment, creating no preferences, among his creditors, of all his property, for their benefit. About ten months thereafter he filed voluntary petition in bankruptcy, and his discharge being opposed by creditors on specification that such assignment had been made by him in contemplation of becoming bankrupt, for the purpose of preventing the distribution of his property, under the Bankruptcy Act, in satisfaction of his debts,

*Held*, Bankrupt made such assignment with intent to delay and hinder creditors.—*Goldschmidt*, vol. 8, p. 164.

#### 16. Estoppel of Creditors.

Where bankrupt had made an assignment of all his property for the benefit of all his creditors, and the assignee being unable to act, the property, by written agreement of creditors, was transferred by him to another assignee for the purpose of the original assignment, and certain of the creditors who signed said agreement sought to oppose the discharge of the bankrupt on the ground that he had acted in the premises with intent to evade the requirements of the statute,

*Held*, That the rules and analogies of equity jurisprudence should govern the case; and the said creditors were estopped from setting up such grounds of opposition against their declarations in the said agreement.—*In re Schuyler*, vol. 2, p. 549.

#### 2d. On Title of Bankrupt.

#### 17. Necessary to Divest.

Until the assignment or conveyance is

made to the assignee, the title to the property remains in the bankrupt.—*Sutherland v. Davis*, vol. 10, p. 424.

3d. *On Attachments.*

18. **Over Four Months.**

The assignment of a bankrupt's estate under Section 14 United States Bankrupt Act of 1867, does not dissolve an attachment of his estate made more than four months prior to the commencement of his proceedings in bankruptcy.—*Bowman v. Harding*, vol. 4, p. 20.

4th. *Act of Bankruptcy.*

19. **Does not stop running of Fourteen Days.**

A merchant who stops the payment of his commercial paper cannot prevent the running of the fourteen days, necessary to make this stoppage an act of bankruptcy, by the execution of an assignment for the benefit of all his creditors, previous to the expiration of said period.—*Laner*, vol. 9, p. 494.

5th. *Statute of Limitations.*

20. **Accrual of Cause of Action.**

Where the bankrupt fraudulently conveyed his lands, to avoid a judgment, a purchaser under the judgment, and a sale made under execution, after proceedings in bankruptcy commenced, cannot defend on the ground that the assignee did not commence suit to set aside the execution, sale, and deed within two years after the assignment. No cause of action accrued to the assignee against such purchaser, until he acquired his title, under the judgment and execution sale.—*Davis v. Anderson et al.*, vol. 6, p. 145.

6th. *The Estate Conveyed.*

21. **Rights of Bankrupt and Property fraudulently Conveyed.**

An assignment only transfers the property which the bankrupt then had, excepting, of course, fraudulent conveyances made by him previously to the commencement of bankruptcy proceedings.—*Mayo v. Manufacturers' National Bank of Philadelphia*, vol. 4, p. 660.

22. **Absence of Fraud, subject to all Equities.**

In the absence of fraud the assignee takes only such rights and interests as the

bankrupt himself had or could assert at the time of his bankruptcy, and consequently they are affected with all the equities which would affect the bankrupt himself if he were asserting those rights and interests.—*Dow*, vol. 6, p. 10.

23. **Same Plight and Condition.**

The assignee takes the property of the bankrupt "in the same plight in which it was held by the bankrupt, when his petition was filed."—*Charles H. Wynne*, vol. 4, p. 23.

7th. *Distribution.*

24. **Liability of Assignee when Fraudulent.**

Bankrupt made a fraudulent assignment to S. The attorney of S. was attorney for the bankrupt, and also for one P., a creditor. Payments were made to S. and to P. by said attorney, out of proceeds of assigned property.

*Held*, That the assignment was void, and that S., P., and the attorney should account to the assignee for the property and proceeds thereof.—*In re Edward Meyer*, vol. 2, p. 422.

25. **By Receiver, when Validity affirmed.**

Where a voluntary assignment under the State law was adjudged valid, and debtors subsequently went into bankruptcy, a special receiver held moneys of bankrupts which had come to his hands through a voluntary assignment under the State law adjudged to be valid.

*Held*, A proper portion thereof ought to be distributed among the creditors in bankruptcy, not through the assignee in bankruptcy, but direct by such receiver to the proper distributees.—*Sedgwick, Assignee, v. Place*, vol. 3, p. 302.

(E.) *Act of Bankruptcy.*

26. **General Assignment is.**

A general assignment by an insolvent debtor, though made for the benefit of all his creditors, is an act of bankruptcy under the Bankrupt Act of March 2, 1867.—*In re William H. Langley*, vol. 1, p. 559.

27. **Idem.**

A general assignment, though it should direct the property to be distributed according to the provisions of the Bankrupt Act, defeats the provisions of the act in this, that it deprives the creditors and

gives to the debtor the election of the trustee to wind up the estate.—*Randall & Sunderland*, vol. 3, pp. 24, 25.

### 28. *Idem*.

An insolvent debtor executed two chattel mortgages to secure pre-existing debts, and afterwards made a general assignment without preferences for the benefit of all his creditors.

In his answer to petition against him in involuntary bankruptcy, he denied having committed an act of bankruptcy, and denied that he knew, or believed himself insolvent when he executed the said mortgages, though he made admissions in such answer that showed that he was legally insolvent, and that he knew the facts upon which the law adjudged him insolvent.

*Held*, Such debtor is conclusively presumed to intend the necessary effects of such general assignment, which would be to defeat provisions of the Bankruptcy Act. In making such general assignment, he, therefore, committed an act of bankruptcy.—*In re Seymour T. Smith*, vol. 3, p. 377.

### 29. *Idem*, by Copartners.

A general assignment by an insolvent firm of all the firm property for the benefit, equally, of all its creditors, untainted by actual fraud, is nevertheless an act of bankruptcy, as being, in contemplation of law, made with intent to defeat or delay the operation of the Bankruptcy Act.—*Spicer & Peckham v. Ward & Trow*, vol. 3, p. 513.

### 30. By a Railroad Company.

One who is insolvent and undertakes to make a final distribution of his assets, must do it through the Bankrupt Court. A trust to sell all a debtor's property, and divide the cash ratably among his creditors, is an act of bankruptcy, but a mortgage by a railroad company to secure all its creditors equally out of its earnings, or to pay such as refuse the security their ratable proportion of the proceeds, is not an act of bankruptcy.—*The Union Pacific Railroad Co.*, vol. 10, p. 178.

### 31. Contra, Dependent on Intent.

A debtor being, and knowing himself to be insolvent, made a general assignment for benefit of creditors, under the laws of Ohio, in December, 1868, before proceedings in bankruptcy.

*Held*, Such an assignment, when made in good faith, is not necessarily an act of bankruptcy, but it must be entirely clear from taint of fraud.—*Fairin v. Crawford et al.*, vol. 2, p. 602.

### 32. *Idem*.

A general assignment by a debtor of all his estate and effects is not, of itself merely, an act of bankruptcy, but when the debtor is for other causes adjudged bankrupt, his assets will be administered under the provisions of the Court in Bankruptcy.—*Kintzing*, vol. 3, p. 217.

### 33. When made to Prevent Preference.

Where a creditor is about to recover a judgment, and the debtor makes a general assignment of all his property for the benefit of his creditors before the judgment is rendered, this is not a conveyance with intent to delay, defraud, or hinder creditors. The innocence or guilt of the act depends on the mind of him who did it, and it is not a fraud unless it was meant to be so.—*Langley v. Perry*, vol. 2, p. 596.

### 34. Without Intent to Defraud, not a Bar to Discharge.

An assignment for the benefit of creditors, without any preference, sixteen days before the filing of the debtor's petition in bankruptcy, and when a creditor proceeding adversely was about to obtain a judgment,

*Held*, not to preclude the discharge of the bankrupt.

That such an assignment would be an act of bankruptcy under the 39th Section of the Bankrupt Law, if adversary proceedings were instituted within six months, does not make it, in the absence of actual fraud, a bar to a discharge under the 29th Section.—*In re Pierce & Holbrook*, vol. 3, p. 258.

### 35. Evidence of Intent to Defeat Act.

Where it appeared solely from the testimony of bankrupt, that he had made a general assignment for benefit of creditors, and filed an application in bankruptcy on the fourth succeeding day,

*Held*, That a bare denial of the bankrupt is insufficient to show that such transfer was not made in contemplation of bankruptcy. Application for a discharge denied.—*In re Brodhead*, vol. 2, p. 278.

**36. Creditor accepting Composition, on Default may set it up as Act of Bankruptcy.**

A finding himself unable to meet his liabilities, compromised with all his creditors, except B, whom he proposed to pay in full if he would give a large extension of time ; to this B agreed, and received as security an assignment of two judgments, and also a deed for a lot, which together were supposed to exceed in value the amount of B's claim. The claim was not paid, however, and more than six months after the assignment a petition in bankruptcy was filed against A by B.

*Held*, That A made a disposition of his property with the intent to delay, hinder, and defraud his creditors, and that he had committed an act of bankruptcy.—*Esfort & Petring v. Greeley*, vol. 6, p. 433.

*Particular Assignments.*

**37. Invalid if Preference created.**

Merchants not able to pay off their debts in the usual and ordinary course of business, as persons carrying on trade usually do, are insolvent within the meaning of the Bankruptcy Act of 1867, and assignments of goods to creditors in such case constitute fraudulent preferences, contrary to the provisions of the 39th Section of said act. Discharge refused.—*In re Louis & Rosenham*, vol. 2, p. 449.

**38. Idem.**

An assignment of a claim to secure a pre-existing indebtedness made when the bankrupt was insolvent, and not as a pledge of security, made at the time the indebtedness was contracted and not as a part of the transaction, is a fraudulent preference and a good ground for refusing a discharge.—*In re B. N. Foster*, vol. 2, p. 282.

**39. Idem.**

A debtor made an assignment of his stock in trade and notes of hand to one of his creditors within six weeks of the filing of a petition in bankruptcy against the debtor. Assignment held void under Section 85 of the Bankrupt Act ; and assignee in bankruptcy entitled to recover from the preferred creditor the value of the goods and notes thus transferred to him.—*North, Assignee, v. House et al.*, vol. 6, p. 365.

**40. To Secure Indorser.**

Where the debtor was a merchant and judgments had been recovered against him, executions thereon issued and levy made on his stock of goods, conceded valid liens, an indorser for the insolvent, whose liability had become fixed by the protest of two several notes, purchased the entire stock of goods, giving as part payment his two checks (which were duly paid), the one to pay the sheriff for the amount of the levy and conceded value, and the other to cover his liability as indorser on notes then due and to become due, the amount of such purchase being the full value of the stock and more than could have been realized at a forced sale, it being agreed the purchaser should account for and pay over to the insolvent the surplus arising from the sale to an amount larger than that included in the checks.

*Held*, That as it was evident that there was an intent to secure a preference, but even if no such intent existed it must be held that the transfer was in fraud of the bankrupt law, and must be set aside on that ground, and the endorser taking the transfer held to account.—*Cookingham et al., Assignees, v. Morgan et al.*, vol. 5, p. 16.

**41. Whether Solvent or Insolvent.**

*Held*, Under the Bankrupt Act, that an assignment, whether the assignor be solvent or insolvent, with intent to delay, hinder, or defraud, is an act of bankruptcy.—*In re Randall & Sunderland, Involuntary Bankrupts*, vol. 3, p. 18.

*(F.) Setting Aside.*

**42. Expenses of Void not Allowed.**

Where an assignment by a debtor of all his property to an assignee for the benefit of his creditors under a State law, is avoided by one of his creditors by proceedings under the bankrupt law,

*Held*, That the proceedings had under the State law, were in fraud of the Bankrupt Act, and the Court in Bankruptcy cannot allow a party the expenses incurred by him in his attempt to defeat the provisions and operations of the bankrupt law.—*In re Stubbs*, vol. 4, p. 376.

**43. Trustee under to Account to Assignee in Bankruptcy.**

A decree annulling a voluntary assignment by a debtor of all his estate in trust



for the equal benefit of all his creditors, made within six months before the commencement of proceedings under which he was adjudged a bankrupt, should contain a direction for a conveyance by the voluntary assignee, surrendering the estate to the assignee in bankruptcy.

The accounting by the voluntary assignee should be, under the decree, to the assignee in bankruptcy. There should be no subsequent account in a proceeding under State legislation in a court of the State, unless some extraordinary reason requires a distribution under the laws of the State for the benefit of the general body of the creditors.—*Burkholder et al. v. Stump*, vol. 4, p. 597.

#### 44. Creditor's Assent to.

Where a debtor made an assignment under a State insolvent law, and a creditor applied to the State court to have the security of the assignees increased, this was not such an assent to the proceedings as estopped him from claiming that the assignment was an act of bankruptcy.—*Langley*, vol. 1, p. 559.

### ASSUMPSIT.

In assumpsit for the price of goods sold, when the defendant pleads discharge in bankruptcy, the plaintiff is not estopped by the form of his action to reply that the debt was created by the fraud of the defendant.—*Stewart v. Emerson*, vol. 8, p. 462.

### ATTACHMENT.

See BANKRUPT,  
COMMENCEMENT OF  
PROCEEDINGS,  
COST,  
LIEN,  
PRACTICE,  
RENT.

#### ATTACHMENT—

- I. *For Contempt*, p. 256.
- II. *Of Property*, p. 257.

#### I. *For Contempt*.

##### 1. Dismissing Appeal.

Pending an appeal, the judgment-debtor filed his petition in bankruptcy, and obtained an order from the bankruptcy court that the creditors show cause why they should not be restrained from enforcing their claim, with a stay of proceedings in

the meantime. Before the order to show cause was returnable, the appeal in the State court was called in its order, and dismissed by the plaintiff's attorney, he having had notice of the stay granted by the bankruptcy court, and a motion was thereupon made for an attachment against the judgment creditor and his attorney for disobedience of the stay.

*Held*, That no action of the plaintiff in regard to this appeal would tend to enforce any demand against the bankrupt, nor deprive the assignee in bankruptcy of any property or right; and, therefore, the dismissal of the appeal could not be a violation of the order of this court forbidding proceedings to enforce the plaintiff's claim.—*Hirsch*, vol. 2, p. 3.

##### 2. Refusing to Answer Interrogatories.

On an application for attachment of witnesses for contempt in not making answers on examination under a commission, *Held*, That attachment must be refused for the reason that no written interrogatories accompanied the commission, and no information furnished, as to the particular inquiry.—*In re Samuel Glaser*, vol. 2, p. 398.

##### 3. Interfering with Property of Bankrupt after Petition Filed.

When a voluntary petitioner in bankruptcy files his petition in due form, he becomes eo instanto a bankrupt so far as the property named in his inventory is concerned, and said property is in the custody of the Bankruptcy court. Where the Sheriff executed processes in certain replevin suits instituted by the creditors of such a bankrupt, and took property in his possession, and set forth in his inventory, and delivered the same to claimants, *Held*, That the action of the Sheriff was unauthorized, and claimants ordered to deliver the property to the assignees in bankruptcy; or, if the same had been sold, to pay the value thereof to the said assignees, and attachment to issue in default thereof.—*In re Henry Vogel*, vol. 2, p. 427.

##### 4. Violating Injunction.

A creditor who had obtained judgment in a State court and issued execution before his debtor was adjudged bankrupt, was restrained from selling the property, after adjudication, by an injunction of the United States Court sitting in bankruptcy.



Notwithstanding this injunction, however, he caused the property to be sold by the Sheriff. *Held*, That an attachment for contempt in violating the injunction would lie. *In re Atkinson*, vol. 7, p. 143.

## II.—Of Property.

### (A.) Generally.

#### 5. Assets of Bankrupt—Not Subject.

The distribution of the assets of a bankrupt cannot be interfered with by process of a State court. Money awarded under a rule of court cannot be attached.—*In re Bridgman*, vol. 2, p. 252.

#### 6. Taking on Preference.

The taking of property on attachment or execution is receiving a preference; the mere obtaining of judgment, however, is not.—*Stevens*, vol. 4, p. 367.

#### 7. To Protect Existing Liens Valid.

Where the law recognizes the existence of a lien, and authorizes a provisional attachment of sufficient property to satisfy the final judgment, being to determine simply the *amount* of the lien, such an attachment is not dissolved by Section Fourteen of the Bankrupt Act, when issued within four months prior to commencement of proceedings.—*Marshall v. Knox et al.*, vol. 8, p. 97.

#### 8. Judgment on Undertaking.

Where to dissolve an attachment a defendant gives an undertaking with two sureties, and more than four months after the issuing of the attachment, bankruptcy proceedings are commenced against the defendant, his discharge in bankruptcy will not prevent judgment being recovered in this action, and his sureties being bound therefor.—*Holyoke v. Adams*, vol. 10, p. 270.

#### 9. After Adjudication Exempt.

By an adjudication of bankruptcy under the Bankrupt Act (United States Statutes, 1867, C. 176), even when the proceedings were begun on the debtor's voluntary petition, his property becomes exempt from subsequent attachment on *mesne* process.—*George W. Williams v. Charles Merritt*, vol. 4, p. 706.

#### 10. Contra—Property Concealed.

Where a creditor was not named in bankrupt's schedules, and such creditor, after discharge granted in bankruptcy, attached, by garnishee process, property of

the bankrupt, shown in evidence to have been concealed from the Bankruptcy Court,

*Held*, That the certificate of discharge in bankruptcy did not bind the creditor, and was no defense to his action.—*Barnes v. Moore*, vol. 2, p. 573.

#### 11. Within Four Months Dissolved.

Attachments in State courts, brought within four months before a commencement of proceedings in bankruptcy, are dissolved.—*In re Ellis*, vol. 1, p. 555.

#### 12. Idem.

An attachment of a bankrupt's goods under process in a State court, within four months before bankruptcy, is defeated by the provisions of Section Fourteen of the Bankrupt Act.—*G. W. Pennington v. J. H. Lowenstein et al.*, vol. 1, p. 570.

#### 13. Idem.

Attachment on *mesne* process within four months prior to commencement of proceedings in bankruptcy, are dissolved by the commencement of such proceedings.—*Miller v. Bowles, Appleton v. Stevens*, vol. 10, p. 515.

#### 14. Time Act took Effect.

An attachment was issued out of a State court on the 11th of April, 1867. On a motion to quash the attachment, the court held that the conditional lien acquired by the levy of an attachment may be divested by the operation of a general Bankrupt Law, and that to this extent the act became a law in March, 1867.—*William H. Corner v. E. G. Miller & W. S. Moore*, vol. 1, p. 403.

#### 15. Order Dissolution made on motion of Assignee.

Where there was an attachment pending in the Superior Court against A, who was declared a bankrupt, and his assignee was appointed under the laws of the United States,

*Held*, That the assignee may be made a party to the attachment, and that it was proper, on his motion, to declare the attachment dissolved by the bankruptcy.—*Kent & Co. v. L. T. Downing, Assignee*, vol. 10, p. 538.

#### 16. When Lien perfected by Judgment and Levy on Execution—Protected.

Judgment was recovered, execution is-

sued, and levy made by sheriff on the debtor's goods, previously attached at the commencement of the suit. Debtor was subsequently adjudicated a bankrupt on petition of creditors, and proceedings of the sheriff were stayed in the premises, but the injunction was afterwards modified to authorize him to sell the goods and hold proceeds subject to the order of the District Court.

*Held*, That the lien of the judgment-creditors was good, and that the sheriff should apply the proceeds in satisfaction of the judgment, including his fees and charges therein, and pay the overplus, if any, to the bankrupt's estate.—*In re Henry Bernstein*, vol. 1, p. 199.

#### 17. Contra.

A debtor's property was seized by the sheriff by virtue of an attachment issued out of a State court. After the levy of the attachment, two suits were commenced in a State court, judgment obtained, executions issued and delivered to the sheriff. After such levy the debtor filed his petition, and was duly adjudged a bankrupt.

The judgment-creditors moved for an order directing the payment of the judgments in full on the ground that, by the Bankrupt Act, the attachment was discharged, and, there having been a *bona fide* levy under the executions before the filing of the petition, the lien of the executions is saved by the act.

*Held*, That the provisions of the act do not indicate any intention to improve the condition of any creditor, or create new rights.

That, in the present case, all the right which the judgment-creditor acquired was by a levy in property already subject to an attachment to its full value. Such a levy gave the judgment-creditor no security, and does not entitle him to apply to this court for payment of his judgment in full.—*In re Julius Klancke*, vol. 4, p. 648.

#### 18. Made over Four Months, Good.

The assignment of a bankrupt's estate under Section 14 of the United States Bankrupt Act of 1867, does not dissolve an attachment of his estate made more than four months prior to the commencement of his proceedings in bankruptcy.—*Joseph J. Bowman v. Leander D. Harding*, vol. 4, p. 20.

#### 19. Idem.

The clause in Section 14 of the United States Bankrupt Act of 1867, providing that the conveyance therein mentioned "shall dissolve any attachment made within four months next preceding the commencement" of the debtor's proceedings in bankruptcy, is equivalent to an express provision for the preservation of an attachment made more than four months.—*Leighton v. Kelsey et al.*, vol. 4, p. 471.

#### (B.) Costs in, when Dissolved.

#### 20. Sheriff's Fees a Lien.

Where an attachment is dissolved by the commencement of proceedings in bankruptcy, the title of the property attached vests in the assignee, but subject to all subsisting liens then existing on the property. Where the proceedings of the sheriff, under an attachment, up to the commencement of proceedings in bankruptcy, were regular and valid, he has a lien on the property for his fees which accrued prior to such commencement, but to no greater extent.—*In re Doris Housberger & Gustave Zibelin*, vol. 2, p. 92.

#### 21. Contra.

Where certain creditors attached the stock of goods of a trader, for the express purpose of keeping it together and preventing waste, and the attachments were afterwards dissolved by an assignment in bankruptcy, and the sheriff had incurred charges for insurance, packing, etc. The sheriff has no lien for his costs upon a stock of goods attached by him, when the attachment had been dissolved by the proceedings in bankruptcy, but the Bankruptcy court has power to authorize the assignee to pay such parts of the costs as can be shown, or may be presumed, to have been beneficial to the estate.—*In re Fortune*, vol. 2, p. 662.

#### 22. Idem, all cost unless at Defendant's request.

An attachment issued out of the State court is dissolved from the date of the filing of the petition where an order of adjudication is subsequently granted. Costs that accrued under such attachment, prior to the filing of the petition in bankruptcy, are not a valid lien on the property unless

incurred at defendant's request.—*In re Preston*, vol. 6, p. 545.

**23. Allowed if taken as Auxiliary to Bankruptcy.**

Under the statutes of Michigan, an attaching creditor acquires a lien upon the property attached, for both his debt and his costs; but those statutes make no provision for the retention of any lien for either, in case his attachment is dissolved, neither in favor of the plaintiff in the attachment, nor the officer who makes the levy, and no such provision is found in the bankrupt law.

In all cases where it appears that attachment proceedings were not instituted with a view of obtaining a preference, but were merely auxiliary to bankruptcy proceedings, and so for the benefit of all the creditors, the costs and expenses of such attachment proceedings will be allowed.

The omissions of the attachment creditors to commence proceedings in bankruptcy is not sufficient to rebut the positive averment in the petition that the attachment proceedings were not taken to defeat the operation of the bankrupt act.—*In re George S. Ward*, vol. 9, p. 849.

**24. Officer must deliver without Payment of Fees.**

The right of creditors to prosecute their attachment suits after the commencement of bankruptcy proceedings is taken away, and all attachments issued within four months are dissolved by the said act. An officer in possession of property, under a writ of attachment, cannot refuse to deliver it until his fees are paid. He must apply to the court to be paid out of any funds that may be in the hands of the assignee belonging to the bankrupt.—*Stevens*, vol. 5, p. 298.

(C.) *Disposition of Proceeds.*

**25. Represent property attached.**

Moneys arising from sale *pendente lite*, of property attached, represent the property. Moneys arising from sale of household furniture, sold under process of attachment, belong to the bankrupt.—*Ellis*, vol. 1, p. 555.

**26. Delivery to Assignee.**

It is a good defense for the sheriff to show, in an action brought against him to recover property seized by virtue of an attachment, that the defendant in the attachment sold

the property to the plaintiff, when insolvent, to defraud his creditors, with the plaintiff's knowledge, and that said defendant has since been adjudged a bankrupt and that the sheriff has delivered the goods to the assignee in bankruptcy — *Bolander & Gentry*, vol. 2, p. 655.

**27. Sheriff Liable for.**

Where property of a bankrupt is seized by a sheriff on *mesne* attachment, within four months prior to commencement of proceedings in bankruptcy, and immediately sold by him as perishable property; if, after proceedings are commenced in bankruptcy, he pays the money over to the execution creditor in satisfaction of a judgment obtained and execution issued on the debt for the security of which the attachment was issued, he will be liable to pay the money again to any assignee who may be appointed in the proceedings in bankruptcy, notwithstanding that the payment made to the execution creditor was made in ignorance of proceedings having been commenced in bankruptcy against the debtor.

The position of the sheriff, under such circumstances, likened to the case of where he applies the property of B to satisfy an execution against A.—*Miller v. O'Brien*, vol. 9, p. 26.

**28. Assignee to Apply for.**

Where property has been attached by an officer of a State court on *mesne* process, within four months prior to commencement of proceedings in bankruptcy, the attachment is dissolved by the Bankrupt Law; but the assignee in bankruptcy must apply to the State court to have the officer directed to turn over the property, and not to the Federal court.—*Johnson, Assignee, v. Bishop, Sheriff*, vol. 8, p. 538.

ATTORNEY AND COUNSEL.

See APPEARANCE,  
ASSIGNEE,  
BANKRUPT,  
CORPORATION,  
COST AND FEES,  
EXAMINATION,  
LIEN,  
NOTICE,  
OATH,  
PAPERS,  
REGISTER.

## ATTORNEY AND COUNSEL—

- (A.) *Verification*, p. 260.
- (B.) *Appearance*, p. 260.
- (C.) *Advice of*, p. 261.
- (D.) *Contempt*, p. 261.
- (E.) *Voting*, p. 261.
- (F.) *Witness for, and as*, p. 262.
- (G.) *Election as Assignee*, p. 262.
- (H.) *Fees of*, p. 263.

(A.) *Verification of Pleadings.***1. Verification of Petition for Injunction.**

Certain creditors of Fendley filed their petition for an adjudication in bankruptcy. Prior to this time, some of the creditors filed a bill praying that Miller be restrained by writ of injunction from selling or otherwise disposing of a certain stock of goods, charged to have been fraudulently transferred by F. to M.

A motion was made to dissolve the injunction, on the ground that the bill was not sworn to by the petitioning creditor, but by an agent.

*Held*, That the affidavit of an agent or attorney is sufficient.—*J. J. Fendley*, vol. 10, p. 253.

**2. Idem, for Adjudication.**

So long as it appears that, in fact, the petitioning creditor authorized the institution of the proceedings in his behalf, and so became liable for costs, the matter of signing an authentication is purely formal and unimportant to any right of the debtor. There is no express provision in the rules or orders in bankruptcy, which forbids a petition to be sworn to by an agent or attorney of the petitioning creditor. When the agent is clothed with full authority, and is able to present the proper authentication of the petition required by the forms, such petition should be entertained, although the petitioning creditor does not in person sign or swear to it.—*In re Raynor*, vol. 7, p. 527.

**Contra, as to General Attorneys.**

The general attorneys of creditors cannot make, sign, and verify a valid petition, as the debtor must be adjudged a bankrupt on the petition of one or more of his creditors, and not on that of their agent or attorney.—*In re D. C. Butterfield*, vol. 6, p. 257.

**3. Petition for Affirmative Relief should be by Creditor in Person.**

The proper way to bring the creditor into the case is by petition, setting forth the facts on which he relies for relief, and praying for the specific relief he seeks. In the first instance, seeking affirmative relief, he must come in person, and not by attorney.—*In re John Ogden Smith*, vol. 2, p. 297.

(B.) *Appearance.***4. Proof of Authority in Legal Proceedings.**

Upon the hearing of the petition for review on behalf of a corporation, the authority of its counsel was denied. The professional statement of counsel as to their authority must be taken as conclusive evidence of the fact asserted unless proof to the contrary is made.—*Alabama and Chattanooga Railroad v. Jones*, vol. 5, p. 97.

**5. Idem.**

The Register cannot inquire into the authority of an attorney or counselor of the Circuit or District Court, to appear for creditors.—*Wm. D. Hill*, vol. 1, p. 16.

**6. Authorization by Corporation.**

When a petition in bankruptcy is filed against a corporation it is not necessary, in order to authorize counsel to appear and admit the acts of bankruptcy charged, that the corporators or shareholders should previously, by a vote, authorize that act, or direct it to be done.—*Letter v. Payson*, vol. 9, p. 205.

**7. Waiver of an Unauthorized Appearance.**

Where an attorney authorized appears for an individual or corporation in answer to a rule to show cause, and waives important rights of the alleged bankrupt, as admitting the allegations of the petition, the proceedings in bankruptcy may be set aside upon the application of such alleged bankrupt. But this motion must be made within a reasonable time after notice thereof, or it will be held waived, and the authority of the attorney by such silence ratified.—*In re Republic Insurance Company*, vol. 8, p. 317.

**8. At Meetings in Bankruptcy.**

An attorney cannot act for a creditor at meetings held in the course of proceedings

in bankruptcy, unless authorized to do so by a letter of attorney acknowledged before a Register in bankruptcy or United States Commissioner.—*In re William C. Christley*, vol. 10, p. 268.

#### 9. Continuance of Authority after Adjudication.

Objection was raised to the service of the petition of review upon the attorneys for the petitioner in the preceding proceedings, for the reason that upon the adjudication of the corporation their relation of attorney ceased as to petitioning creditors. The service on the attorneys being sufficient, because reasonable notice to counsel is sufficient, and they are still the counsel for petitioning creditor, as bankruptcy proceedings are a single statutory case from the filing of the petition to the discharge of the bankrupt.—*Alabama & Chattanooga R. R. Co. v. Jones*, vol. 5, p. 97.

#### (C.) Advice of.

#### 10. Not in all Cases Protection.

The discharge of a bankrupt was refused where it appeared that he had made an illegal and fraudulent preference of one of his creditors, although it appeared he had acted under advice of counsel, and the transferee had surrendered the goods without suit by the assignee.

If the advice of counsel will be a protection in any case, it must be shown that the bankrupt acted on it in *good faith*, believing he had a legal right to do what he did, and the question must be one of sufficient delicacy to rebut all possible fraudulent intent in seeking the advice.—*In re Michael Finn*, vol. 8, p. 525.

#### Different Interests.

#### 11. For Assignee and Creditors.

The counsellor of the assignee may act as attorney for creditors in bankruptcy proceedings.—*In re Samuel W. Levi & Mark Levi*, vol. 1, p. 184.

#### (D.) Contempt.

#### 12. Filing Petition in Bankruptcy when Enjoined by State Court.

A creditor of a bank having applied to have a Banking Association dissolved, and a receiver appointed, the court granted an

injunction restraining the bank disposing of its assets, and appointing a receiver.

The attorneys of the bank advised it to apply for the benefit of the Bankrupt Act.

The Judge of the State court adjudged the attorneys guilty of contempt, and disbarred them until such time as they procured the dismissal of the proceedings in bankruptcy, and the return of the fund to the jurisdiction of the State court.—*Watson v. Savings Bank*, vol. 9, p. 458.

#### 13. Applying for Receiver, when enjoined by Bankrupt Court.

C, attorney-at-law, on notice, sought to obtain the appointment of a receiver of the property belonging to the bankrupt.

Before the hearing of the motion, an injunction was issued out of the United States District Court, restraining C from further proceeding with his application. The injunction was served on C, notwithstanding which C procured the appointment of a receiver to take charge of the bankrupt's property.

The testimony showed that C was not served with the injunction until he was on his feet before the Justice of the Supreme Court, engaged in making the application for a receiver; that he stated this fact to the justice, and took no further action except to hand up to the justice his motion papers, with a draft order for the appointment of the receiver wished for.

*Held*, That C was guilty of contempt.

Reference ordered to the Register in charge of the case to take testimony as to the amount of expense and loss occasioned by the violation of the injunction.—*In re South Side Railroad Co.*, vol. 10, p. 274.

#### (E.) Voting.

#### 14. Only when Attorney in Fact.

An attorney-at-law cannot vote for his client without being duly constituted his attorney in fact.—*In re James J. Purvis*, vol. 1, p. 163.

#### Knowledge of.

#### 15. Client not necessarily chargeable with.

Knowledge of a debtor's insolvency is not necessarily to be presumed of the creditors because of such knowledge by their attorney. *In re J. B. Wright*, vol. 2, p. 490.



*(F.) Witnesses.***16. Not entitled to.**

Where a witness objects, by counsel, to examination, on the ground that there was no question in controversy to be settled by testimony, and that the examination of witnesses is not in order until after an examination of the bankrupt,

- Held*, "Counsel for witness" is an anomaly leading to confusion and delay.—*In re Fredenberg*, vol. 1, p. 268.

**17. Though his Testimony may establish a Liability.**

Witness is not entitled to counsel in his examination before the Register, although the examination of the witness may establish a liability on his part to the bankrupt.—*In re Stuyvesant Bank*, vol. 7, p. 445.

**18. Even where Suit against Pending.**

A witness summoned by the creditor cannot have attending counsel at his examination. Objection by the counsel of the bankrupts to the examination of the witness, on the ground that he had been enjoined, at the suit of the assignee, in respect of the bankrupt's property, and been made thereby a party to the bankruptcy proceedings, overruled.—*In re Robt. Friesberg, Martin Sternbock, and Gustav Pessels*, vol. 2, p. 425.

**19. If the Bankrupt is Witness.**

A bankrupt under examination has no right to consult with his attorney before answering, except when the examining magistrate shall see good cause for allowing it.

- The attorney may attend and object to improper questions.—*In re Edward P. Tanner*, vol. 1, p. 816.

**20. Idem.**

In the examination of a bankrupt, he may not consult with his counsel before answering interrogatories, except by permission of the Register.—*In re John C. Collins*, vol. 1, p. 551.

**21. Being called as a Witness.**

His privilege extends only to information derived from his client as such.—*O. Donohue*, vol. 3, p. 249.

**22. Not Compellable to Disclose what Imparted by Client.**

Counsel of a bankrupt cannot be compelled to disclose information in regard to

the affairs of the bankrupt, which are imparted to him as counsel by the bankrupt.—*Aspinwall*, vol. 10, p. 448.

**23. Nor by Persons to whom Referred.**

Nor can he be compelled to disclose information received on behalf of the bankrupt as to the bankrupt's affairs, from persons to whom he was referred by the bankrupt.—*Ibid.*

**24. Must Disclose Subject Discussed.**

The privilege of counsel does not extend to the concealment of the subject discussed, but only to the discussion.—*Ibid.*

**25. Idem. But not the Conversation.**

Counsel was required to answer as to what affairs of the bankrupt were discussed in a particular conversation, though excused from the statement of the conversation.—*Ibid.*

**26. With whom he Conferred.**

Privilege of counsel will not justify counsel in refusing to answer with whom he had conversation in relation to affairs of bankrupt, though it will excuse him from stating the conversation had.—*Ibid.*

**27. Knowledge and Disposition of Specified Instruments.**

Privilege of counsel cannot be set up as an excuse for not answering whether "a particular paper ever came under witness's observations," or whether "witness drew, or directed to be drawn, a certain deed from the bankrupt," or whether, "at a certain date, witness received certain checks drawn to the order of the bankrupt," or "what disposition was made of such checks."—*Ibid.*

**28. Knowledge by Reason of being Counsel.**

Acts and things which have come to witness's knowledge by reason of his position as counsel, may be inquired about, and the witness required to state all the information he has in regard to them, which was not communicated to him by the bankrupt, or by some one through the bankrupt's direction.—*In re James S. Aspinwall*, vol. 10, p. 448.

*(G.) Election as Assignee.***29. Former Counsel of Bankrupt.**

A person who has been of counsel for a bankrupt may be appointed assignee, it being understood that he cannot occupy the



position at the same time.—*In re Jules Clairmont*, vol. 1, p. 276.

### 30. Attorney of Creditor.

An attorney for a creditor of the bankrupt may be assignee of the bankrupt's estate.—*Barrett*, vol. 2, p. 533.

### 31. Idem.

There is nothing in the act to prevent an attorney for the creditor from being chosen and appointed assignee by them.—*J. H. Lawson*, vol. 2, p. 113.

### (H.) Fees.

### 32. Preparing Schedules and Petition.

The claim of an attorney for services and disbursements, is not a claim to be paid in full under Section 28 of the Act of Bankruptcy.—*In re Louisa Heirschberg*, vol. 1, p. 642.

### 33. Idem. Mortgage to Secure, Void.

Lawyers were employed by bankrupt to prepare petition and schedules soon to be filed in voluntary bankruptcy, and, by agreement, bankrupt gave them his note of hand for the amount due, secured by mortgage of his real and personal property, set forth in the schedules as assets.

*Held*, The mortgage was made contrary to provisions of the 85th Section of the act, is a nullity, but they can prove their claim as unsecured creditors.

Bankrupt can no more execute a conveyance declared by the law to be null and void, in order to secure a fee to his lawyer, than to secure the claims of any other creditor.—*Evans*, vol. 3, p. 261.

### 34. Not a Preferred Claim.

The attorney of bankrupt petitioned to be allowed for services rendered prior to adjudication, and up to the time of the choice of an assignee.

*Held*, That they were general creditors of the bankrupt and must prove their debt in the usual form for all services rendered prior to the adjudication.—*Jaycox & Green*, vol. 7, p. 140.

### 35. Alter for Preserving Estate.

Counsel of bankrupt is entitled to be paid out of the bankrupt estate for services rendered in preserving the estate for the assignee.—*In re Montgomery*, vol. 3, p. 137.

### 36. Idem.

All necessary and proper charges for the care and custody of the property incurred after the petition in bankruptcy is filed, are incurred for the assignee, and must be paid by him out of the assets.—*In re New York Mail Steamship Co.*, vol. 2, p. 554.

### 37. Must be clearly Proved.

Before the assignee can be required to pay for such services, it must be clearly shown that they were properly and necessarily rendered for the purpose of benefiting or preserving the estate of the bankrupts in the interest of the general creditors.—*Jaycox & Green*, vol. 7, p. 140.

### 38. Application for.

Attorneys for bankrupt applied to the Register for an order for the payment by the assignee, out of the assets, of a sworn bill of items of disbursements by them, of one hundred and thirty-seven dollars and sixty cents, on account of clerk's, Register's, and marshal's fees, for printing in the case, to which the assignee objected. The Register certified the question of payment of the bill to the court.

*Held*, That the proper way to bring the matter before the court was by petition, either by the assignee or bankrupt's attorneys.—*Rosenberg*, vol. 3, p. 73.

### 39. Amount of.

Where the Register is called on to certify as to what sum he deems right to be paid to the counsel for the assignee, and signifies three hundred and fifty dollars as the utmost limit, but certifies the question to the court for its opinion, because counsel feels aggrieved at the inadequateness of the sum, the ruling of the Register was sustained.—*In re J. & S. Warshing*, vol. 5, p. 850.

### 40. For Petitioning Creditors.

A creditor's petition for an adjudication of bankruptcy against the estate of his debtor, is the same as a creditor's bill against a deceased insolvent. All creditors must contribute *pro rata* to the expenses of the suit. Whether counsel fee shall be allowed, as well as the measure of such fee, rests with the court, and is a question addressed to its equity.—*In re Daniel Williams*, vol. 2, p. 83.

**41. Amount of.**

Where a counsel for petitioning creditors obtains an adjudication, and performs other services incident to the bankruptcy proceedings, but it does not appear that he has in any way recovered property fraudulently conveyed to or possessed of by creditors, and the assets of the estate amount to about the sum of fifteen thousand dollars, an allowance of one thousand dollars made to the counsel for petitioning creditors, by the Register before whom proceedings are pending, is too extravagant, and will not be confirmed unless assented to by the assignee, the bankrupts, and all the creditors who have proved their debts. — *In re Sanger & Scott*, vol. 5, p. 54.

**42. Of Creditor Opposing Discharge.**

Where a creditor opposes discharge of a bankrupt, a case is created for trial in the court docket, and the counsel fee is allowed as a proper charge. — *Eidom*, vol. 3, p. 160.

**43. Idem. Successful in Suit by Assignee.**

Upon a suit by the assignee against certain creditors to avoid their liens, the attorneys of those creditors, although successful, are not entitled to any counsel fee out of the general fund in addition to that given by statute. — *Hope Mining Co.*, vol. 7, p. 598.

**44. For Assignee.**

When the fund has been benefited by the service of counsel, a fee may be allowed out of such fund. — *In re Hope Mining Co.*, vol. 7, p. 598.

**45. Rendered Prior to Appointment.**

No charges for professional services of counsel to assignees will in general be allowed, where the services were rendered prior to the appointment of the assignees. — *In re The New York Mail Steamship Company*, vol. 2, p. 423.

**46. Payment of Attorney's by Bankrupt.**

Payments made to counsel for services "rendered and to be rendered" by bankrupt without fraud, is not a ground for refusal of discharge. — *In re Rosenfield, Jr.*, vol. 2, p. 116.

**47. For Securing Exemptions.**

An attorney is also entitled to be paid out of the same fund for services rendered to the bankrupt, on securing the allowance of ex-

emptions which were rejected by the assignee. — *In re Comstock & Young*, vol. 5, p. 191.

**BAIL.****Obtaining Goods Color of Carrying on Business.**

An insolvent obtained goods on credit from various parties with the intention to defraud, under the false color and pretense of carrying on business and dealing in the ordinary course of trade, and on hearing before a commissioner he was held to bail in the sum of five thousand dollars. — *United States v. Geary*, vol. 4, p. 534.

**BANK.****1. Lien on Stock for Debt.**

A bank, organized according to the provisions of the 35th Section of the National Currency Act, has, in order to prevent loss upon a debt previously contracted, a lien upon the share of an individual stockholder, and can apply the same as well to the payment of individual as partnership indebtedness. — *In re Edward Bigelow, David Bigelow & Nathan Kellogg, composing the firm of E. & D. Bigelow*, vol. 1, p. 667.

**2. When Pledged.**

A bank is entitled to certain shares of its capital stock, subscribed by the bankrupt as collateral security for his stock note, and also on his general indebtedness to the bank; and has a right to hold such stock although there is an indorser to the note.

The bank should prove its demand for the debt as secured by the stock, and by leave of court have it sold, the proceeds to be applied to payment of the debt, and prove as a creditor of the estate for any balance that may remain. — *In re Thomas Morrison*, vol. 10, p. 105.

**3. No Lien on Deposits for Separate Transaction.**

A banker has no lien upon the moneys of a depositor for any separate debt which the depositor may be owing him, hence, any amount on deposit, in the name of the bankrupt, must go in as assets, and the banker must prove his debt and take his dividends with the other creditors. — *Warner et al.*, vol. 5, p. 414.

**4. Nor for Money to pay Notes.**

When a banker, in accordance with his

usual custom, charges his depositor, in his deposit-account, for the notes or other obligations as they fall due, the transaction is valid only as between the banker and the depositor, but in the event of the depositor becoming bankrupt, it might constitute an unlawful preference under said act.—*O. P. Warner et al.*, vol. 5, p. 414.

#### **5. Liability for Deposits not Fiduciary Debt.**

The obligation incurred by a banker, in the ordinary course of his business as such with his customers, is not fiduciary in its nature, but the liability is only that of an ordinary debtor.—*In re Bank of Madison*, vol. 9, p. 184.

#### **6. Aliter—if Special Deposit.**

A delivered to B, a banker, money to pay a certain note and mortgage as soon as they should be sent to him. B credited the money to A in his book, and used it in his general business. About two days before the failure of B, the mortgage and note were sent to him, and while waiting for instructions how to remit the amount, he failed.

A petitioned the United States District Court for an order directing the assignee to pay him this money, alleging it to have been in the hands of the bankrupt as his bailee or trustee at the time of the bankruptcy.

*Held*, That this was, in reality, a claim for damages against B for not having retained and withheld the money from his general business, as a special deposit, and that there was no relief for the petitioner beyond taking his chances with the other creditors.—*In re Robert Hosie*, vol. 7, p. 601.

#### **7. Savings Banks in New York not Entitled to Preference under Bankrupt Act.**

A savings bank is not entitled by the laws of New York to be preferred to other creditors in distributing the estate of a bankrupt under the Bankrupt Law.—*The Sixpenny Savings Bank v. The Estate of the Stuyvesant Bank*, vol. 10, p. 399.

#### **8. Interest allowed after Proof, on Bank Bills.**

The creditors of a bank in bankruptcy, whose estate has paid all the debts proven

against it in full, leaving a surplus in the hands of the assignee, and the evidences of debt filed with the proofs being the bills or notes of the bank, issued as money, are entitled only to interest on such notes in proof, from the date of the proof and filing of the bills before the Register.

To entitle the holder of bank bills to interest thereon, presentation, demand, and refusal, are pre-requisite, and neither the suspension of payment nor the commencement of proceedings in bankruptcy, of themselves, operate to change a circulating medium into an interest-bearing obligation.—*In the matter of the Bank of North Carolina, Bankrupts*, vol. 10, p. 289.

#### **9. Pending Liquidation in State Court, adjudged Bankrupt.**

A petition to review and reverse an adjudication of bankruptcy was filed in the United States Circuit Court by commissioners appointed under State law, for the purpose of liquidating the affairs of the bank. The defendants to the petition of review except, on the ground that the commissioners are not the legal representatives of the bank. The court decided that the petition of review must be dismissed at the costs of the commissioners, and that the judgment whereby the bank was adjudged bankrupt be affirmed.—*Thornhill et al. & Williams v. Bank of Louisiana*, vol. 5, p. 367.

#### **10. National Banks not Subject to Act.**

The Bankrupt Act is not intended to apply to national banks, though possibly included in the words of the 37th Section, extending the provisions of the Bankrupt Act to all moneyed corporations. That the construction of that section must be limited by the general purpose and object of the act, and so limited will exclude national banks, for the winding up of which, when insolvent, Congress has made especial provisions.—*Smith v. Mf. Nat. Bk.*, vol. 9, p. 122.

#### **BANKRUPT.**

See ACT OF BANKRUPTCY,  
ADJUDICATION,  
ALIENS,  
CORPORATION,  
DISPUTED TITLE,  
DISCHARGE,  
EXAMINATION,

INDICTMENT,  
INFANT,  
INSANE PERSONS,  
MARRIED WOMEN.

(A.) *Amenable to Act.*

**1. Who may be.**

Under English and Massachusetts law only traders could take advantage of the Bankrupt Act; but under the present law any person may.—*Morgan, Root & Co. v. Erman E. Mastick*, vol. 2, p. 521.

(B.) *Is Trustee.*

**2. Until Assignee Appointed.**

The provisions of Sections 39, 40, 41, 42, 43, which provide for proceeding against the bankrupt, injunctions to restrain him and others from making any disposition or transfer of his property, and for taking possession of it, do not transfer the title from the bankrupt, nor does the decree adjudging him a bankrupt, of itself, have the effect to deprive him of the title and ownership of his property; hence, until an assignee is appointed and qualified, and the conveyance or assignment made to him, the title to the property remains in the bankrupt.—*Sutherland v. Davis*, vol. 10, p. 424.

**3. After Discharge Denied.**

Where a discharge is refused bankrupt on the ground of his having given a preference,

*Held*, The bankrupt is a trustee for his creditors. Property must be administered in accordance with the provisions of the National Bankrupt Law.—*L. J. Doyle*, vol. 8, p. 640.

(C.) *Jurisdiction of.*

**4. Summary ends with Discharge.**

The summary jurisdiction of the Bankrupt Court over the bankrupt ceases with the granting of his discharge, and the Register cannot issue an order requiring the bankrupt to submit to an examination touching his property claimed to have been fraudulently concealed, five years after a discharge has been granted.—*Anderson*, vol. 9, p. 360.

**5. Before Assignee appointed may file petition to preserve Property.**

Before the appointment of assignees a petition for an injunction can be filed only by the bankrupt.—*Bowie*, vol. 1, p. 628.

**6. Denial of Act of Bankruptcy.**

When the bankrupt denies the act of bankruptcy and demands a jury trial, it is his duty under Section 39, as amended June 22, 1874, to file a list of his creditors and the amount of their claims.—*The Warren Savings Bank v. J. K. Palmer & Co.*, vol. 10, p. 239.

(D.) *Examination of*

**7. Failure to Attend—because Sick.**

A bankrupt who fails to attend on the adjourned day of his examination before the Register, by reason of sickness, cannot be punished for contempt of court.—*In re Josiah Carpenter*, vol. 1, p. 299.

**8. Repeating Answers.**

It is no sufficient excuse for not answering a question put to the bankrupt that he has already replied to it at a former examination held at the instance of some other creditor or the assignee.—*In re Vogel*, vol. 5, p. 393.

**9. Even after "Arrangement."**

A creditor may be entitled to an order for the examination of a bankrupt under the 26th Section of the Bankrupt Act, notwithstanding the election of a trustee and committee of creditors under the 43d Section, the latter section not confining the power of the court to order such examination to the application of the trustee.—*In re Cooke & Co.*, vol. 10, p. 126.

**10. Fees of Register in.**

The party for whom services are performed by the officers of the court, must pay the fees incident to such service. A creditor is only bound to pay expenses of his own examination. A bankrupt making further statements, after creditor's examination is closed, must pay his own expenses.—*In re Mealy*, vol. 2, p. 128.

(E.) *Miscellaneous provisions.*

**11. Cannot be Purchasers.**

Bankrupts, before the appointment of the assignee, stand in a fiduciary relation to the estate, and cannot be purchasers.—*March v. Heaton and Hubbard*, vol. 2, p. 180.

**12. Cost of Discharge.**

Where bankrupts (involuntary) complied with all the requirements of the Bankrupt Law, filed a petition for their discharge, there being funds in the hands of the assignee, and the final dividend not having

been declared, the following questions arose: "Whether the costs incurred upon the petitions of bankrupts for their discharge, the hearing on said petition, publication of notice of hearing, etc., shall be paid out of the funds in the assignee's hands belonging to the estate of said bankrupt, or by the bankrupts themselves.

*Held*, The assignee should pay them.—*M. Olds et al.*, vol. 4, p. 146.

### 13. Duty to File Petition.

The doctrine of preference by a creditor to force the giving or security for the payment of a debt is not applicable under the present Bankrupt Act, and it is no answer when a debtor mortgages his property to secure such a debt to say that he was "pressed" to do it.

His duty is to file a petition in bankruptcy, so that his assets can be equally distributed.—*Rison, etc., v. Knapp*, vol. 4, p. 349.

### 14. Protection of.

It is the duty of the Register to protect the bankrupt from annoyance, oppression, and mere delay, while at the same time full and fair opportunity is to be allowed to the creditors to inquire into the matters specified in the 26th Section of said act.—*Adams*, vol. 2, p. 273.

### 15. Bankrupt's Property.

"Bankrupt's property" includes money raised on execution by the sale thereof.—*Mills et al. v. Davis et al.*, vol. 10, p. 840.

### 16. Death of.

A discharge cannot be granted in the case of a bankrupt who shall have died, pending proceedings in bankruptcy, without complying with the requirements of Section 29 of the act.—*In re O'Farrell*, vol. 2, p. 484.

### 17. Married Woman.

A married woman may be adjudged a bankrupt, and there is no difference between voluntary and involuntary proceedings, so far as the ability to adjudge a woman bankrupt is concerned.—*In re Collins*, vol. 10, p. 835.

### 18. Insolvency not necessary to Adjudication.

It is not necessary to show a defendant to be actually insolvent to have him adjudged a bankrupt. It is sufficient to show he has committed what the law defines to

be an act of bankruptcy, and actual insolvency need only be shown when the act done is only declared to be an act of bankruptcy when done by one actually insolvent, as a gift or transfer of property.—*In re Guy Wilson*, vol. 8, p. 396.

## BANKRUPT ACT.

See ACT OF BANKRUPTCY,  
ADJUDICATION,  
AMENDMENT,  
DISCHARGE,  
DENIAL ACT.

### 1. Time of Taking Effect.

Judgment was rendered against the debtor in a California State court, January, 1866, from payment whereof he claimed to be discharged by virtue of proceedings under the insolvent laws of said State, commenced May 1, 1867, and terminated, by final decree, on July 1, 1867. On appeal from the decision of the court below denying the motion to quash execution upon such judgment,

*Held*, That the Bankruptcy Act, so far as it operated to supersede the State insolvent laws, did not take effect until June 1, 1867.—Vol. 2, 629.

### 2. To Supersede State Insolvent Laws.

The State insolvent court acquired rightful jurisdiction of the case on the issue, May 1, 1867, of the order under the State laws staying proceedings of creditors, prior to the operation of the Bankruptcy Act, and its proceedings are valid, and unaffected by that statute.

The State insolvent laws were superseded by the Bankruptcy Act, June 1, 1867, and all proceedings thereafter commenced under said act are null and void.—*Martin v. Berry*, vol. 2, p. 629.

### 3. To Dissolve Attachments.

An attachment was issued out of a State court on the 11th of April, 1867. On a motion to quash the attachment, the court held that the conditional lien acquired by the levy of an attachment may be divested by the operation of a general bankrupt law, and that to this extent the act became a law in March, 1867.—*Wm. H. Corner v. E. G. Miller et al.*, vol. 1, p. 408.

### 4. Constitutional Grant to Congress.

The Constitution gives Congress full



power over "the subject of bankruptcies" in the United States, and in the enactment of laws on this subject Congress is not limited to the scope or details of the Bankrupt Act in force in England at the time of the formation and adoption of the Constitution; the subject is committed to the wisdom and discretion of the Legislature, with the one qualification that its laws shall be uniform in their operation throughout the United States.—*Silverman*, vol. 4, p. 523.

#### 5. Object as to Distribution.

The object of the Bankrupt Act is to compel an equal distribution of a debtor's assets among all his creditors.—*Morgan, Root & Co. v. E. E. Mastick*, vol. 2, p. 521.

#### 6. Idem, as to Commercial Paper.

A Bankrupt Law is intended to uphold amongst bankers, merchants, etc., prompt payment of commercial obligations, but it should not be perverted to the purpose of wrong and injustice by compelling honest debtors, under apprehension, to yield to unjust exactions from alleged creditors.—*Leonard*, vol. 4, p. 562.

#### 7. Retroactive Effect.

There is nothing in the language of the 29th Section of said act, which indicates an intention to confine the operations of its provisions to transactions occurring after the passage of the act. *In re Rosenfeld*, 1 N. B. R. 161, considered and overruled.—*In re J. Cretiew*, vol. 5, p. 423.

#### 8. Does not Affect Estates of Decedents.

An executorship, for the purpose of winding up and settling the business of the testator, is not one of the class of executorships designed to be administered under the Bankrupt Act; therefore, a petition in bankruptcy filed against the executors in such a case must be dismissed.—*Graves et al. v. Winter et al.*, vol. 9, p. 357.

#### 9. Comparison Acts of 1841 and 1867, "Contemplation of Bankruptcy."

The Act of 1841 declares void preferences made by a party contemplating bankruptcy; the Act of 1867 includes those made by a party being insolvent, and the decisions under the former Act are not always applicable to the present statute.—*Hall v. Wager & Fales*, vol. 5, p. 182.

#### 10. Idem. Ascertainment Amount due.

The Acts of 1841 and 1867, compared in this respect to the ascertainment of the amount due.—*Jones & Cullom v. Knox*, vol. 8, p. 559.

#### 11. Approval Constitution of North Carolina.

The approval by Congress of the new constitution of North Carolina, does not operate as an amendment of the bankrupt law with respect to the additional exemptions therein provided for.—*In re McLean*, vol. 2, p. 567.

#### 12. Amendment July, 1868, Retroactive Application.

A bankrupt having filed his petition on June 8, 1868, applies for a discharge, notwithstanding his assets will not pay fifty per centum of claims against his estate, and no written assent of a majority of creditors of proved claims is presented.

*Held*, That the Act of July 27, 1868, amendatory of the 33d Section of the Bankrupt Act, applies retroactively to such cases filed after June 1, 1868, and prior to July 27, 1868, and discharge must be granted.—*In re W. Billing*, vol. 2, p. 512.

For Amendments of July 1870, March 3, 1873, and June 22, 1874, see title AMENDMENTS.

### BANKRUPT COURT.

See JURISDICTION,  
BANKRUPT ACT,  
COURTS.

#### 1. Custody of Property.

Where debtors had been adjudged bankrupts on their own petition, but delayed to surrender their assets to the Register,

*Held*, That an order should be issued for the immediate surrender thereof to the Register, and the appointment by him of a proper custodian.—*In re Shafer & Hamilton*, vol. 2, p. 586.

#### 2. Idem.

That this court, after the commencement of proceedings in bankruptcy, became vested with all the powers and control over the assets that were previously vested in either the chartered officers of the company or the stockholders, or both



collectively, and could, by virtue of its authority, make or direct any assessment or call, necessary or preliminary to the collection of the assets, as fully as the stockholders or directors could do if the company had not gone into bankruptcy.—*Upton v. Hambrough*, vol. 10, p. 868.

### 3. Time of Commencing Proceedings.

The time of filing the petition to be adjudicated a bankrupt was the time of the commencement of proceedings in bankruptcy. The same rule applies to involuntary cases where creditors file petitions and adjudication follows.—*Chas. G. Patterson*, vol. 1, p. 125.

### 4. Idem. Cessation of Control of Property.

In voluntary petition in bankruptcy, the rights of the bankrupt to the disposition of his property cease on the filing of the petition. In involuntary petitions such right ceases upon the adjudication.—*Dillard*, vol. 9, p. 8.

## BANK STOCK.

See BANK.

A bank is entitled to certain shares of its capital stock, subscribed by the bankrupt as collateral security for his stock note, and also on his general indebtedness to the bank, and it has a right to hold such stock, although there is an indorser to the note.—*In re Morrison*, vol. 10, p. 105.

## BANKRUPTCY OF PLAINTIFF.

### Pending Suit.

It is not a ground for nonsuit that plaintiff has been adjudged a bankrupt since the suit was begun.

If plaintiff is adjudged a bankrupt after suit brought, the court may direct the jury, if they find for plaintiff, to find that he recover for the use of his assignee in bankruptcy.—*Nancy Wooddail, Administratrix, v. Austin & Holliday*, vol. 10, p. 545.

## BARGAIN AND SALE.

### 1. Rescission of

A contracted with B for the sale of certain scales, payment to be made by B's note on their delivery and after they were set up. They were delivered but not set up according to contract, and B's note was

not given. Soon after this B was declared bankrupt. A petitioned to have his goods returned, which was granted, and an order entered accordingly.—*In re A. Pusey*, vol. 6, p. 40.

### 2. Purchase Money not fully Paid.

Where a bankrupt owned property which he had only partly paid for, and left the possession and rent of it in the seller, under an agreement that the seller was to apply the rent in the reduction of the purchase-money; this does not convey such an interest in the property back to the vendor, as will prevent the full title from vesting in the assignee in bankruptcy.—*Hall v. Scovel*, vol. 10, p. 296.

### Advances Under.

Where contract has been terminated solely on account of the default of the purchaser, the seller having been ready to perform on his part, an action will not lie by the purchaser or by his assignee in bankruptcy to recover back the payments made by him previous to his default.—*Edward E. Kane, Assignee, v. William Jenkinson*, vol. 10, p. 816.

## BILL IN EQUITY.

See PLEADING.

### To set aside Fraudulent Conveyances.

The assignee in bankruptcy can claim only such interest and right in any property as the bankrupt could have claimed at the filing of the petition by or against him. Hence, where the bankrupt has made conveyances, by which his books of account pass to an assignee of his own selection, the assignee in bankruptcy cannot claim them until such conveyances are shown to have been fraudulent and void. To obtain possession of such books, an assignee must proceed by a bill in equity or action at law, in which the validity of said conveyances can be tested, and not by simple petition.—*Rogers, Assignee, v. Winsor*, vol. 6, p. 246.

## BOARD OF TRUSTEES

See TRUSTEES.

### 1. Of Corporation cannot Authorize Secretary to File Petition.

Where the Board of Trustees of a company authorized their secretary to file peti-

tion for the purpose of having the corporation adjudicated bankrupt,

*Held*, That such filing was illegal, the trustees having no power to authorize their secretary to do so. When a corporation seeks to avail itself of the provisions of the Bankrupt Act, it must do so in the manner prescribed by the act.—*In re "The Lady Bryan Mining Co."* vol. 4, p. 144.

## 2. Idem. Cannot File Petition in Bankruptcy.

Although the management of a corporation may be committed to a Board of Trustees, by the laws of a State, that of itself does not authorize them to file a bankruptcy petition, under an act of Congress, whereby others have been clothed with the requisite power.

The action of a board is not the action of the corporation. The corporation must act at a meeting "called for the purpose."—*"Lady Bryan Mining Company,"* vol. 4, p. 394

## BONA FIDE PURCHASER.

To constitute a *bona fide* purchaser for value, he must not only show that he had no notice, but he must have paid a consideration at the time of the transfer, either in money or other property, or by a surrender of existing debts or securities.—*Rison, Assignee of Heddens & McDiarmid, v. Knapp*, vol. 4, p. 849.

## BOND.

See CREDITORS,  
PROOF OF DEBTS,  
REGISTER,  
SURETY,  
WRIT OF ERROR.

### 1. On Appeal.

Where no bond has been filed in a case of appeal, as required by Section 8 of the United States Bankrupt Act of 1867, no appeal can be allowed after the expiration of ten days from the entry of the decree.

Where, however, the bond is proper in form, and the sureties are sufficient, the United States District Court will approve it as a bond which would be a proper one if given in time, leaving it to the appellee to move the Appellee Court to dismiss the

appeal, if such a course shall seem proper to him.

Where the court cannot approve the bond as proper in form, and the delay in filing has been more than ten days, the issuing of execution on the decree will not be stayed.—*Benjamin, Assignee, v. Hart* vol. 4, p. 408.

### 2. Of Assignee.

On motion of creditors for an order to have assignee file a new general bond, of which two of the sureties had become bankrupt and the third surety was his wife, conditioned that he would faithfully discharge the duties of the office in every case in which he was or should become assignee,

*Held*, That a general bond for such purpose is not authorized by the Bankruptcy Act, but that an assignee must give special bond in each case where a bond is necessary.—*McFaden*, vol. 3, p. 104.

### 3. Power of Register to Require.

The power of the Register to require the assignee to give the bond required by the 13th Section of the act, upon the written request of creditors who have proven their claim, or to proceed to take testimony for the purpose of ascertaining the amount in which such bond ought to be given, *Doubted*.—*Bininger v. Clark*, vol. 9, p. 568.

## BONUS.

See ASSIGNEE,  
USURY.

### Not Provable Debt.

Notes given for the excess or bonus over legal interest are not provable in bankruptcy, and must be surrendered to the assignee.—*Shaffer v. Fritchery & Thomas*, vol. 4, p. 548.

## BOOKS OF ACCOUNT.

See CREDITORS,  
CONCEALMENT,  
DISCHARGE.

### 1. Who must Keep.

A party buying and selling goods for the purposes of gain, though but occasionally, is to be considered a merchant and trader, and must keep proper books of account, so

that the creditors may learn the actual condition of his affairs.—*In re O'Bannon*, vol. 2, p. 15.

## 2. Idem.

A bankrupt who has sold one carriage, one sleigh, two pairs of horses, one piano, one harness, and a part of a lot of cigars, but without ever having formed a deliberate purpose of buying goods to sell again in order to raise money, is not thereby made a merchant or tradesman within the meaning of the law, and a failure to keep proper books of account will not prevent his discharge.—*Rogers*, vol. 3, p. 564.

## 3. Where the Business Closed.

Where it clearly appears that a trade formerly carried on by the bankrupt had been ended before the bankruptcy, and that nothing concerning that trade remained outstanding, so that there was nothing for the assignee in bankruptcy to inquire into or to do concerning the same, the failure of the bankrupt to keep proper books of account for that trade will not bar his discharge.—*Keach*, vol. 3, p. 13.

## 4. Idem.

A bankrupt, in June, 1867, sold out the whole interest in his store. His petition in bankruptcy was filed in February, 1868. Between June and February he was out of business, except that he bought and sold apples, partly on his account and partly on a joint enterprise with another. He kept no books of account.

*Held*, That the omission to keep such books must prevent the granting of his discharge.—*In re Tyler*, vol. 4, p. 103.

## What are Proper Books.

## 5. Accidental Omissions.

The accidental omission of entries in a trader's book is not conclusive of his not having kept proper books of account.—*Burgess*, vol. 3, p. 196.

## 6. Idem, whether Fraudulent or Innocent.

The provision of the Bankrupt Law of 2d March, 1867, that no discharge shall be granted if the bankrupt, being a merchant or tradesman, has not, subsequently to the passage of the act, kept proper books of account, applies whether the omission to

keep them has been with fraudulent intent or not.—*Re Solomon*, vol. 2, p. 285.

## 7. Idem.

It is not necessary that the omission of a bankrupt to keep proper books of account should be willful in order to prevent a discharge. The intent of the non-keeping of books is immaterial; the mere omission is the thing plainly interdicted.—*Abraham Newman*, vol. 2, p. 302.

## 8. Determinable by Circumstances of each Case.

What are proper books of account in any case must be determined by the facts and circumstances of the particular case.—*In re Abraham Newman*, vol. 2, p. 302.

## 9. Cash Book.

In keeping proper books of account a cash book seems to be indispensable.—*In re Gay*, vol. 2, p. 358.

## 10. Idem.

The bankrupt, who is a tradesman, must keep a cash book, otherwise he cannot obtain his discharge.—*Littlefield*, vol. 3, p. 57.

## 11. Idem.

No discharge will be granted where the bankrupts, merchants, have failed to keep cash book.—*Bellis & Milligan*, vol. 3, p. 496.

## 12. Invoice or Stock Book.

A bankrupt who is a tradesman is not entitled to a discharge under the Bankrupt Act if he has not kept an invoice or stock book.—*In re White*, vol. 2, p. 590.

## 13. Entries on Slips.

Entries on numerous slips of paper, each entry on a separate slip, as a permanent form of keeping accounts, is not a keeping of books of account within the meaning of the law.—*Hammond v. Coolidge*, vol. 3, p. 273.

## 14. Entries Unintelligible.

Where bankrupts are charged with not keeping proper books of account and the receipts and disbursements entered in cash book were unintelligible,

*Held*, Discharges cannot be granted to bankrupts.—*In re John Murdock Mackay and John Neilson*, vol. 4, p. 66

## 15. Idem.

Persons who buy on credit and sell again, in such wise as to be merchants or

tradesmen, must keep such books in relation to their business as will furnish an intelligent account to their creditors of the state and course of their business transactions. If they neglect to do this, a discharge must be refused.—*In re Garrison*, vol. 7, p. 287.

#### 16. Intelligible to Ordinary Bookkeeper.

Where a bankrupt, after March, 1867, fails to keep proper books of account—such books as will enable an ordinary bookkeeper to determine his true financial condition—his discharge will be refused.—*In re Schumpert*, vol. 8, p. 415.

#### 17. Detached Cheques.

A detached cheque is admissible in evidence on the question as to whether the bankrupt has kept proper books of account, such cheque having once formed a part of the book, and, together with the stump, shows just how the book was kept.—*In re Brockway*, vol. 7, p. 595.

#### 18. Mutilation of.

The mutilation of a book of accounts by bankrupt may be explained.—*In re Nooman & Connolly*, vol. 8, p. 267.

#### 19. Bars Discharge.

Under Section 29 of the Bankrupt Act, the failure of a merchant or tradesman to keep proper books of accounts is a bar to a discharge in bankruptcy.—*In re Jorey & Sons*, vol. 2, p. 668.

#### 20. Idem.

Where it appears from the evidence that a bankrupt has failed to keep proper books of account the case is one in which, under Section 29, a discharge cannot be granted.—*In re Bound*, vol. 4, p. 510.

#### 21. Exhibition of.

If the bankrupt has the actual possession of joint estate and joint books of account, he must disclose them to his separate assignees, and if he willfully fails to do so, is not entitled to his discharge.—*In re Beal*, vol. 2, p. 587.

#### 22. Possession, how Obtained.

The assignee in bankruptcy can claim only such interest and right in any property as the bankrupt could have claimed at the filing of the petition by or against him. Hence where the bankrupt has made conveyances by which his books of account pass to an assignee of his own selec-

tion, the assignee in bankruptcy cannot claim them until such conveyances are shown to have been fraudulent and void.

To obtain possession of such books, an assignee must proceed by a bill in equity or action at law, in which the validity of said conveyances can be tested and not by simple petition.—*Rogers, Assignee, v. Winsor*, vol. 6, p. 246.

#### 23. Production of.

The District Court will order the production of books and papers at the summary hearing on the return day of the order to show cause.

The 15th Section of the Judiciary Act of 1789 is applicable to such cases; if not, the general scope of the Bankrupt Law gives plenary power.—*Mendenhall*, vol. 9, p. 285.

### BREACH OF PROMISE.

#### Judgment in is Provable Debt.

A judgment obtained on breach of promise to marry, is a debt provable in bankruptcy, and is barred by discharge.—*In re Sidle*, vol. 2, p. 220.

### BURDEN OF PROOF.

See EVIDENCE.

#### (A.) On Defendant.

##### 1. Out of ordinary course of Business.

Where a transaction that contemplates the securing of a debt is out of the ordinary course of business, the Bankrupt Act declares it to be *prima facie* fraudulent, and the *onus* of showing that it is not so, is cast upon the defendant.—*Martin, Assignee, etc., v. Toof, Phillips & Co.*, vol. 4, p. 488.

##### 2. Idem.

Construction and object of Section 35. A sale made within the four months, out of the usual course of trade, is *prima facie* fraudulent, and puts upon the purchaser the burden of proving it to have been made in good faith and for legitimate ends.—*Walbrun v. Babbitt, Assignee*, vol. 9, p. 1.

##### 3. Preferences.

The transfer by a debtor of a large portion of his property, while he is insolvent, to one creditor, without making provision for an equal distribution of its proceeds to all his creditors, necessarily operates as a

preference to him, and must be taken as conclusive evidence that a preference was intended, unless the debtor can show that he was at the time ignorant of his insolvency, and that his affairs were such that he could reasonably expect to pay all his debts. The burden of proof is upon him in such a case, and not upon the assignee or contestant in bankruptcy.—*Toof et al. v. Martin*, vol. 6, p. 49

#### 4. *Idem*.

To establish an intent to prefer a creditor, it is sufficient for the assignee to show that the bankrupt, while insolvent, paid or secured this creditor in full without making adequate provisions for the other creditors, and this will place upon the defendant the *onus* of satisfying the court that at the time of making the transfer or payment, the bankrupt did not know he was insolvent.—*Stobaugh v. Mills & Fitch*, vol. 8, p. 361.

#### 5. Denial of Act of Bankruptcy.

By the express terms of Section 41 of the Bankrupt Act, the burden is upon the debtor to prove to the satisfaction of the court that the facts set forth in the petition filed against him for an adjudication of bankruptcy are not true, and unless he does so the petitioner is entitled to judgment.—*In re Price & Miller*, vol. 8, p. 514.

#### 6. *Contra*.

The burden of proof is on the creditor to show that the debtor *procured* or *suffered* his property to be taken on legal process with intent thereby to give a preference. *In re Dwight B. King*, vol. 10, p. 103.

#### 7. Suspension of Commercial Paper.

On mere proof that a trader, within six months before a petition in bankruptcy was filed against him, failed to pay his commercial paper for fourteen days, and did not resume payment thereof till such petition was filed, the *prima facie* presumption is that such failure was fraudulent, and such proof casts on him the burden of rebutting that presumption of fraud by satisfactory evidence.—*Heinsheimer et al. v. Shea & Boyle*, vol. 3, p. 187.

#### 8. *Idem*.

Suspension of payment of commercial paper for fourteen days by a merchant, is

*prima facie* evidence of fraud, and casts the burden of proof on the alleged bankrupt; and, being unexplained, a decree of bankruptcy must be adjudged on the creditor's petition.—*In re Bullard & Parsons*, vol. 2, p. 250.

#### 9. Alleged Insolvency.

A trader unable to pay his debts in the ordinary course of business is *prima facie* insolvent, and the burden of proof is upon him in such a case, to show that he is solvent.—*Aliter*, as to a farmer, where the petitioner must prove the actual insolvency of the alleged bankrupt.—*Miller v. Keys*, vol. 3, p. 225.

#### (B.) *On Assignee*.

#### 10. As to After-acquired Property.

The *onus* is on the assignee to show, affirmatively, that money deposited in a bank by the bankrupt after the petition was filed, was his (the bankrupt) property at the time the assignment by relation took effect.—*Mays et al., Assignee of Born, v. The Manufacturers' National Bank of Philadelphia*, vol. 4, p. 660. *Cummings v. Stoddard*, vol. 4, p. 254.

#### (C.) *On Creditor*.

#### 11. Opposing Discharge.

Where specifications are filed in opposition to the discharge of a bankrupt, the burden of proof is on the creditor, and when he fails to show just cause for refusing a discharge, it must be granted.—*In re O'Kell*, vol. 2, p. 105.

#### 12. *Idem*.

The creditors of a bankrupt opposed his discharge on the ground that he had procured the assent of a certain creditor to his discharge by a pecuniary obligation. The evidence showed that he had paid this creditor's counsel his fee for services rendered in the matter, amounting to twenty dollars; but it was also shown that this creditor had announced that he would not oppose the discharge, before anything whatever was said about the bankrupt paying his counsel fee, and that such payment was not made a condition of his withdrawing further opposition.

*Held*, That the burden of proof was on the creditors opposing the discharge, and

the proof did not sustain the specification.  
—*In re George S. Mawson*, vol. 1, p. 548.

(D.) *Requisite Proportion.*

**13. On Creditors to Show they Constitute the Requisite Proportion.**

On an issue formed by the debtor, as provided in Section 9 of the Amendment of June 22, 1874, as to whether the petitioning creditors constitute the requisite proportion of creditors, the affirmative of the issue is on the petitioning creditors. *In re Scull*, vol. 10, p. 165; *In re Jacob Hymes*, vol. 10, p. 433.

CARRYING ON BUSINESS.

**1. As Agent.**

B. acts as agent and attorney for his brother in buying and selling merchandise in New York City, at an office having a sign with his brother's name on it, and well known by those who had dealings with him to be doing such business at that office.

*Held*, To be carrying on business within the meaning of the 11th Section of the act.  
—*In re Tatnall Bailly*, vol. 1, p. 613.

**2. As Clerk.**

Where petitioner in bankruptcy had carried on business and resided in New York for twenty years prior to June, 1866, and removed to New Jersey that year, but was still engaged as a clerk with his successors in business,

*Held*, That his petition was properly filed in the District Court for the Southern District of New York.—*In re William K. Belcher*, vol. 1, p. 665.

**3. As Liquidator.**

Where a bankrupt had been a member of a manufacturing firm in New Jersey, which failed and stopped business, and, while continuing to reside in New Jersey, had an office in New York, where he received and wrote letters, and was settling up the business of the firm,

*Held*, That he was not carrying on business in New York, within the meaning of the statute, and discharge must be refused for want of jurisdiction.—*In re William H. Little*, vol. 2, p. 294

**4. By Railroad.**

"Carrying on business," within the meaning of the 11th Section of the Bank-

rupt Law, as applied to a railroad corporation, does not mean the conduct of such transactions as are merely collateral or incidental to the purpose for which the corporation is created, whether they are conducted by agents or officers, and although an office is continuously kept for the purpose.—*In re Alabama & Chattanooga R. R. Co.*, vol. 6, p. 107.

**5. Continuation by Trustees under Arrangement.**

Under Section 43, the court may authorize the trustees to carry on the business of the bankrupt as if there had been no failure; and may allow formal proof of debt to be dispensed with, where the correctness is admitted.—*In re Darby*, vol. 4, p. 211.

CASHIER.

See CORPORATION.

**After Receiver Appointed.**

A cashier is still an officer of the bank for the purpose of being served with an order to show cause, although he has given the keys to the receiver appointed by State court and has become his clerk and ceases to act as cashier.—*Platt v. Archer*, vol. 6, p. 465.

CERTIFICATE.

See DISCHARGE,  
CERTIFYING QUESTIONS,  
REGISTER.

**1. Of Inventory not Conclusive.**

The certificate of the Register to the sufficiency of the inventory of the debtor's debts, is not so conclusive as to prevent inquiry when the question is raised by a proper party at the proper time, and in the proper manner.—*In re William D. Hill*, vol. 1, p. 16.

**2. Signing in Blank.**

The practice of signing and furnishing blank certificates by Registers condemned.—*Jaycox & Green*, vol. 7, p. 303.

CERTIFYING QUESTIONS.

See REGISTER,  
PRACTICE.

**1. Only Actual not Hypothetical Questions.**

Only actual questions arising and existing on issues of law or fact in proceedings



had, and not hypothetical questions, or questions in anticipation or likely to arise, are proper to be certified for decision by the judge.—*John Pulver*, vol. 1, p. 47.

**2. Idem.**

It is not proper to certify to the judge points or questions that do not properly arise in the course of the proceedings before the Register, as the opinion of the judge cannot be asked in advance.—*Pray*, vol. 2, p. 139.

**3. Idem.**

No opinion will be given on abstract questions certified to the judge by the Register.—*In re Edward T. Sturgeon*, vol. 1, p. 498.

**4. Between the Parties Contesting.**

A question, in order to be properly certified to the judge, must arise regularly in the course of proceedings before the Register, and between the parties having the legal right to raise it.—*In re J. W. Wright*, vol. 1, p. 393.

**5. In the Course of the Proceedings.**

It must be shown in the certificate of the Register, that the question certified arose upon a point or matter in the course of the proceedings before him.—*Peck*, vol. 3, p. 757.

**6. Idem.**

Where an action had been commenced in the Superior Court of Connecticut against a firm doing business in New York, attachment laid, judgment recovered, and execution issued, without the consent or privity of said firm, in part for money loaned, and the balance upon promissory notes for money loaned, a portion of which (about fifteen thousand dollars) fell due subsequent to the commencement of said action,

Q. 1. Is it lawful for the plaintiff to continue his action in said Superior Court for the purpose of condemning the property attached, and for perfecting his lien thereon—or is it the duty of plaintiff to discontinue said action?

2. Is it the duty of the plaintiff to release said lands from the lien of said attachment?

3. Ought plaintiff to amend his deposi-

tion for proof of debt, and, if so, in what manner?

4. Ought the real estate attached to be sold subject to the lien thereon, and, if so, in what manner?

*Held*, The questions are not certified by the Register as being upon any point or matter which has arisen in the course of proceedings before him, and are not within the first subdivision of Section 6.—*In re Bronson Peck*, vol. 3, p. 758.

**7. Idem.**

Where the questions certified to a United States District Judge in bankruptcy only contain abstract questions, and do not arise in the course of the bankruptcy proceedings or upon the result of such proceedings, and are certified in behalf of a person who is not a party in the Bankrupt Court, such questions not being certified as authorized by the act, they will be returned undecided, for the reason that a decision on them would be of no force or effect.—*In re Haskell*, vol. 4, p. 558.

*Subjects of.*

**8. Decision of Register.**

A Register holding provisionally a court of bankruptcy should declare his opinion upon questions which may arise during the course of the proceedings. If exceptions be taken to the Register's provisional decision, he should certify the question to the court.—*In re Reakirt*, vol. 7, p. 329.

**9. Discharge.**

Where it appears from testimony elicited on the examination of a bankrupt before a Register, that a creditor was influenced by a pecuniary consideration paid to the creditor's attorney, although a very small one, not to oppose the discharge of the bankrupt, and the proceedings are certified up by the Register to the District Court,

*Held*, That such question is not a proper one for the Register to certify to the District Judge, inasmuch as the Register is forbidden to hear any question as to the allowance of an order of discharge.—*In re Mawson*, vol. 1, p. 265.

**10. Examination.**

Where a question was put to the bankrupt under examination, which he refused to answer,

*Held*, No decision could be given as to the question raised, because the certificate did not disclose what interrogatories preceded the one which witness refused to answer.—*In re Charles G. Patterson*, vol. 1, p. 161.

### 11. Objections to Proof of Debt.

When written objections to a proof of debt are filed with the Register and testimony is taken thereon, it is his duty, if requested by either party, to certify the same to the District Judge for decision, even though no proof whatever be offered tending to invalidate the debt so proved.—*In re Clark & Bininger*, vol. 6, p. 202.

### 12. Idem.

A Register has power to pass upon the satisfactory or unsatisfactory proof of debt, but where a question of law or fact is raised in respect thereof, the same must be certified for the decision of the judge under Section 4.—*In re Henry Bogert and Robert D. Evans*, vol. 2, p. 435.

### 13. Amendment of Schedules.

A creditor does not, by opposing an application for, raise a question of fact which it is necessary to certify for the opinion of the judge.—*In re Watts*, vol. 2, p. 447.

## CHAMPERTY

An agreement of certain creditors with a solicitor, that he should prosecute at his own expense and save them harmless, in consideration of his retaining three-fourths of all sums recovered, their claims against bankrupts based on debts valid in their inception, is no defense against the same on account of champerty.—*Lathrop et al.*, vol. 8, p. 410.

## CHATTEL MORTGAGE.

(A.) *Act of Bankruptcy*, p. 276.

(B.) *Execution of*, p. 276

(C.) *Validity*, p. 277.

(A.) *Act of Bankruptcy*.

### 1. To Secure Pre-existing Debt.

A debtor who executes a chattel mortgage to secure a pre-existing indebtedness with intent to delay, hinder, and defraud his creditors, commits an act of bankruptcy.—*Walter C. Cowles*, vol. 1, p. 280.

### 2. Machinist of his Tools.

Where defendants, machinists, executed chattel mortgages of tools, goods, etc., to

secure the payment of certain debts due creditors, and suspended payment shortly after,

*Held*, That an order, adjudicating them bankrupts, should issue.—*In re Edmund P. Rogers and Miers Coryell*, vol. 2, p. 397.

### 3. To Secure Judgment Confessed by Insolvent.

A creditor, knowing the bankrupt could not pay his debts without help, loaned him money, and left the matter of security to the lawyer and his debtor. The debtor confessed judgment on the debt, and subsequently gave a chattel mortgage of his entire stock of goods, to secure payment of the judgment. The creditor surrendered the security to the assignee, and claimed to prove his debt under Section 23 of the act.

*Held*, That formal proof of a debt is *prima facie* sufficient, that under the provisions of Section 39 of the act, the chattel mortgage was a conveyance of property to a creditor who had good cause to believe the debtor insolvent, and such creditor was not entitled to prove his debt.—*In re Colman*, vol. 2, p. 562.

### 4. Of Entire Stock in Trade.

Where a stock of goods, which had been mortgaged, were taken possession of by the assignee, and were sold by order of court, and the money held subject to its order, the mortgagee claiming it by petition, and the assignee opposing on the ground that the mortgage was voidable under 2d clause of 32d Section of the Bankrupt Act, the mortgagor being a trader, and the loan being made out of the ordinary course of business within four months of the mortgagee's bankruptcy,

*Held*, That the mortgagee's petition must be dismissed, for the reason that it was out of the ordinary course of business, the mortgagor being a retail dealer, a mortgage of the whole of his stock was a confession of insolvency. If made directly to the creditor, it would have been an act of bankruptcy.—*In re Butler*, vol. 4, p. 303.

(B.) *Execution of*.

### 5. Under Seal.

A chattel mortgage of a stock of goods, executed by one co-partner under seal, and assented to by the other partner by parol, is valid, and is not invalidated by the fact

that a seal is attached, as such mortgages are not required by law to be under seal.—*Hawkins, Assignee, v. First Nat. Bank of Hastings*, vol. 2, p. 337.

(C.) *Validity of.*

**6. For Present and Past Advances.**

Bankrupt borrowed two hundred and fifty dollars of G. in October, 1868, without security or date of repayment mentioned, and on December 17, thereafter, borrowed one thousand dollars more, and gave chattel mortgage on his household furniture to secure the repayment thereof, and also of the said two hundred and fifty dollars, which was duly recorded. On the 24th of December, bankrupt petitioned in voluntary bankruptcy, and was thereupon adjudicated bankrupt, and assignee was appointed February 3, 1869. Mortgagee demanded payment on February 5, 1869, and sold and assigned her mortgage to S. on the 8th of February, for twelve hundred and fifty dollars. S. took possession of the mortgaged property, supposed to exceed in value the amount of the mortgage. Assignee in bankruptcy petitioned to have said mortgage set aside as void.

*Held*, The mortgage is valid as to the one thousand dollars, it not being shown that the same was not made in good faith.

It is valid as to the two hundred and fifty dollars, the mortgagee not having reasonable cause to believe it was made in fraud of any provision of the Bankruptcy Act.—*In re Israel M. Rosenberg*, vol. 3, p. 130.

**7. Unrecorded.**

An unrecorded mortgage of personal property which has not been delivered to and retained by the mortgagee, is valid against the assignee in bankruptcy and of the mortgagor.—*In re Charles W. Griffiths*, vol. 3, p. 732.

**8. Present and Future Indebtedness.**

A bankrupt in July, 1867, gave D. a mortgage upon the fixtures and tools in his factory, which recited that D. had indorsed notes for him on a promise of security. The condition was that the bankrupt, his executors, administrators, and assigns, should, at or before the expiration of nine months from the date of the mortgage, pay certain promissory notes and save D.

harmless from the payment of the same. One note was then described, and the condition proceeded: "and any and all notes given and indorsed by said D. for the accommodation of the said bankrupt during the pendency of this deed." The note described in the deed, and all other notes given or indorsed within nine months after the date of the deed were paid, but the parties continued in their course of dealing, and there were outstanding at the time of the bankruptcy, in January, 1869, notes of the like description to a greater amount than the value of the mortgaged chattels.

*Held*, That the mortgage deed secured the notes made and indorsed after nine months from its date, and that the notes outstanding at the time of bankruptcy were secured thereby.—*Griffiths*, vol. 3, p. 732.

**9. Invalid if Mortgagor Retains Possession.**

A, carrying on business, gave his sister a chattel mortgage upon his stock in trade. The mortgage was duly filed for record, but A retained possession of the mortgaged goods, continued business, and was subsequently adjudged a bankrupt.

*Held*, That the mortgagee had no title to the mortgaged goods paramount to that of other creditors.—*In re Manly*, vol. 3, p. 291.

**10. Idem—and Makes Sales.**

Where the mortgagor remained in possession of his stock of goods, the property mortgaged, and continued with consent of the mortgagee to make sales therefrom, the mortgage does not constitute a lien.—*The Second National Bank of Leavenworth et al. v. Hunt, Assignee of Keller Gladding*, vol. 4, p. 616.

**11. Idem.**

A mortgage fraudulent and void as to creditors is so as to the assignee in bankruptcy.

By statute, in Nevada, a chattel mortgage is void as to creditors unless immediate possession of the mortgaged property be taken and retained by the mortgagee, *arguendo*.

Independent of the statute, a mortgage of goods is fraudulent and void as to creditors, if the mortgagor is allowed to remain in possession and sell and traffic with them

as his own.—*In re George P. Morrill*, vol. 8, p. 117.

#### 12. Idem.

Where by the terms of a chattel mortgage the mortgagor is permitted to remain in possession and sell the goods, buying others to replace—under an agreement to let the goods bought replace those sold, this renders the whole mortgage void as an illegal hinderance to creditors outside of the Bankrupt Law.

Where a mortgagee leaves the mortgagor of personal property in possession as the agent of the mortgagee, the mortgagee will be chargeable as against other creditors, with the amount sold by the mortgagor, whether applied on the debt or not.—*Vincent M. Smith, Assignee, etc., v. Joseph N. Ely et al.*, vol. 10, p. 554.

#### 13. In Wisconsin, After-acquired Property.

A mortgagee of personal property being, under the laws of Wisconsin, ineffectual to pass after-acquired property, the assignee in bankruptcy is entitled to such property as against the mortgagee who had taken possession.

Though a mortgage be valid as to property then in possession, in a case where a mortgage, subsequently given to cover the property afterwards acquired, would have been void under the Bankrupt Law, the authority given in the mortgage does not enable the mortgagee, by taking possession of such property, to hold it as against the assignee. This would be, in effect, a preference, and against the spirit of the act.—*In re Eldridge*, vol. 4, p. 498.

#### 14. With Notice of Insolvency.

A, B & Co., creditors, after having received information of the insolvency of C, accepted a chattel mortgage on his stock, subject to a prior mortgage and possession of D, another creditor. The evidence showed that C was insolvent, as represented to A, B & Co. C having been adjudged bankrupt, it was,

*Held*, That A, B & Co.'s mortgage was fraudulent, and could not be paid out of the sale of the goods it purported to convey.—*In re Palmer*, vol. 3, p. 283.

#### 15. Idem.

A chattel mortgage void as against cred-

itors under the State law, and under which the mortgagee had taken possession, having at the time reasonable cause to believe his debtor insolvent, is also void as against the assignee in bankruptcy.

#### 16. Idem.

A creditor who accepts a chattel mortgage with a view to obtain a preference, having reasonable cause to believe at the time that a fraud on the act was intended and that his debtor was insolvent, will not be allowed to prove his debt in bankruptcy, and likewise loses the lien of his mortgage.—*Bingham, Assignee, v. Richmond & Gibbs*, vol. 6, p. 127.

#### 17. To a Creditor.

M. and C. were partners in trade, and on the dissolution of the firm, M. purchased of C. his interest in the business, giving his notes in payment, and executing a mortgage to secure the notes on the stock of merchandise and accounts of the firm. M. continued in business some time thereafter, and finally sold and transferred to C. the entire stock of goods then in his (M.'s) store. C. took possession of the stock and made sales on his own account.

At the time of the sale M. was hopelessly insolvent.

*Held*, That the sale gave C. a preference over the other creditors and was therefore invalid; and that C. knew of the insolvency of M. at the time of the transfer, therefore, he must pay into court the value of the property, with interest from the time of the sale and transfer.—*J. J. Smith, Assignee, v. Geo. P. McLean and Charles B. Clark*, vol. 10, p. 260.

#### 18. Necessity for Record.

A mortgagee of a chattel mortgage loses his lien if he neglects to have it acknowledged and recorded as required by the State statute. Even though possession of the property was taken before commencement of proceedings in bankruptcy, and was in accordance with the provisions of the mortgage, it operates as a preference, and therefore void as against the other creditors, if done within the time limited by the present Bankrupt Act.

The taking possession does not remit this creditor to his rights as of the date of his mortgage.—*Harvey, Assignee, v. Crane*, vol. 5, p. 218.

**19. Idem.**

In all cases where a chattel mortgage is given by more than one, and the mortgagors reside in Michigan, but in different townships or cities, the mortgage must be filed in each and every of the townships or cities in which any of the mortgagors reside, and a filing in one only of such townships or cities, or in any number less than all is not a compliance with the statute, and is of no validity or effect whatever.

A mortgage not having been accompanied by an immediate delivery, and followed by an actual change of possession of the things mortgaged, and not having been filed in the township where one of the mortgagors resides as required by law, is absolutely void as against creditors of the mortgagors.—*Edward E. Kane, Assignee, v. Delos E. Rice*, vol. 10, p. 470.

**20. Property in Different States.**

A business corporation made a mortgage for a present passing consideration of goods and chattels, part of which were in the State of New York, and part in New Jersey. The mortgage was filed in the former but not in the latter State.

*Held*, That the mortgage was valid and operative against creditors in New York, but not valid in New Jersey. Reference ordered for the purpose of taking testimony to show what portions of the mortgaged property were severally in New York and New Jersey, when the mortgage was delivered.—*In re "The Soldiers' Business Messenger and Dispatch Co."*, vol. 2, p. 519.

**21. Equity of Redemption.**

Upon general principles of equity jurisprudence the mortgagor of chattels has an equity of redemption therein. The statutes of Massachusetts, which provide for a tender of performance, after condition broken, do not take away this right in equity, and it may be enforced in the Circuit Court of the United States, when that court has jurisdiction of the parties or the subject-matter, and this without a previous tender of performance.—*Foster et al. v. Ames et al.*, vol. 2, p. 455.

**22. Assignee not to Interfere when no Surplus.**

It is not necessary for the assignee to take any proceedings whatever in regard

to personal property of the bankrupt, so heavily mortgaged that it will not sell for enough to pay off such encumbrance, and the assignee has nothing to do but to designate the bankrupt's exempt property, under Section 14 of the Bankrupt Act of 1867.—*In re Hugh G. Lambert*, vol. 2, p. 426.

**CHEQUE.****Assignee may Enforce Rights of Payee.**

In Illinois, the payee of a cheque by presentation at the bank where payable, is thereby vested with the equitable title to so much of the money of the drawer then in the bank as will be sufficient to pay the cheque; and the title to the money so acquired is superior to the banker's lien for maturing paper, and will pass to, and may be enforced by the assignee in bankruptcy of the payee.—*Fourth National Bank of Chicago v. City National Bank of Grand Rapids, Michigan*, vol. 10, p. 44.

**CLAIM.**

See APPEAL,  
COMPOUNDING CLAIMS,  
COMPROMISE,  
DEBT,  
PROVABLE DEBT,  
PURCHASE OF CLAIMS.

**1. Of Accommodation Endorser.**

A sent certain notes to B, which were endorsed by C, to be discounted, and the proceeds placed to his (A's) credit. He drew against them by certain drafts in favor of C, which B failed to pay. C was subsequently adjudged a bankrupt, and B sought to prove his claim against the bankrupt for the notes sent to him by A, but the assignee refused to allow it. On the petition of B to review the action of the assignee in refusing to allow the claim to be proved, the court held, that inasmuch as the drafts were not paid, B had no right to retain the notes, and, therefore, there was a failure of consideration. Claim rejected.—*In re Howard, Cole & Co.*, vol. 6, p. 872.

**2. Damages to Rights in Personal Property Provable.**

A claim for damages for a wrongful conversion of personal property is provable



under the 19th Section of the Bankrupt Act of 1867, and a discharge in bankruptcy would release the bankrupt from such a claim; hence his plea of bankruptcy interposed in a suit brought in a State court to recover such damages is a complete bar, and entitles him to a dismissal of the cause.—*Cole v. Roach*, vol. 10, p. 288.

### 3. For Future Rents.

Where premises under a lease are taken and condemned to the use of a railroad company, and damages are paid by the company to the tenant, upon the basis that his obligation to pay rent during the remainder of the term will continue, which obligation he expressly recognizes when he receives the money, and which he partly performs; the landlord, on the bankruptcy of the tenant, will be allowed to prove, as a claim against the estate, the amount of the unpaid installments of rent, at their value at the date of the bankruptcy.—*In re John Clancy*, vol. 10, p. 215.

### 4. Interest on.

There is nothing in the Bankrupt Law to prohibit the payment of interest on claims proven against the bankrupt's estate, from the day of filing the petition, when there are sufficient funds in the hands of the assignee to do so.—*In re Edward Hagan*, vol. 10, p. 883.

### 5. Undue as Foundation Bankruptcy Proceedings.

A creditor can file a petition against his debtor even though his claim is not due.

If the debts are provable under the act they are such as the act contemplates as sufficient on which to base a bankruptcy petition.

The act surely does not contemplate such inequality as there would be in precluding a creditor holding notes to amount of ten thousand dollars from the right to petition, when one holding an open account to amount of two hundred and fifty dollars is allowed to have the debtor declared a bankrupt if he has been guilty of the acts prescribed as acts of bankruptcy.—*In re Alex. R. Linn et al. v. Loring M. Smith*, vol. 4, p. 47.

### 6. Proof of, gives Jurisdiction over Claimant.

When a creditor presents his claim for probate, he at once subjects himself and

his claim to the power and jurisdiction of the court, and becomes subject to its orders within the provisions of the Bankrupt Act; among which is the provision that the court may examine such creditor concerning the debt sought to be proved.—*In re Paddock*, vol. 6, p. 396.

### 7. Purchase by Intervenor.

The intervenor having become the purchaser of the claim sued on, could prosecute the suit in his own name, or there might be judgment in favor of the plaintiffs for his use, and he has a right to maintain the suit in a court of equitable jurisdiction on proof of his equitable interest in the account.—*J. P. Morris et al. v. H. Swartz*, vol. 10, p. 305.

## CLAIM TO PROPERTY.

### 1. Of Exemption—Mortgagee of Bankrupt cannot Claim.

If a bankrupt does not choose to assert any claim to property that is exempted from execution under the law of the State where he resides, a mortgagee of that property cannot claim it as against the assignee in bankruptcy.—*Edmondson v. Hyde*, vol. 7, p. 1.

### 2. Remedy of Claimant for Seizure by Marshal.

The property of a debtor was levied on by the sheriff, but was taken from his possession in a suit of claim and delivery brought in a State court by parties claiming to own said property, and delivered to the said claimants. In the meantime the debtor was adjudged a bankrupt, and the marshal, under his warrant of bankruptcy, took the property from the claimants, and delivered it to the assignee, on affidavits for an order directing the assignee to deliver it back to the said claimants.

*Held*, That there was no conflict between the marshal and the officers of the State courts, that the parties had their remedy by a suit against the marshal or assignee, or by bill in equity or petition.—*In re Davidson*, vol. 2, p. 114.

## CLAIM AND DELIVERY.

### 1. Action for, does not Lie against Assignee.

When a voluntary petitioner in bankruptcy files his petition in due form, he



becomes *eo instante* a bankrupt, so far as the property named in his inventory is concerned, and said property is in the custody of the Bankruptcy Court. Where the sheriff executed processes in certain replevin suits instituted by creditors of such a bankrupt, and took property in his possession, and set forth in his inventory, and delivered the same to claimants,

*Held*, That the action of the sheriff was unauthorized, and claimants ordered to deliver the property to the assignees in bankruptcy; or, if the same had been sold, to pay the value thereof to the said assignees, and attachment to issue in default thereof.—*In re Henry Vogel*, vol. 2, p. 428.

## 2. Delivery to Rightful Owner is Defense to Sheriff.

Where the defendant, during the pendency of an action to recover the possession of personal property, and before the trial, has been required to deliver and has delivered the property to another who is entitled to its possession as against both the plaintiff and defendant, this fact may be set up in the answer, or in a supplemental answer, for the purpose of barring a recovery of the possession, in the value of the said property.—*Bolander v. Gentry*, vol. 2, p. 655.

## 3. When Taken from Person other than the Bankrupt.

Where the warrant to a marshal transcends the power conferred on a United States Court by Section 40 of the Bankrupt Act, property taken possession of by the marshal from a person other than the bankrupt, cannot be held by the assignee in bankruptcy. Upon the petition of one so aggrieved, the assignee will be required to deliver the property in kind; and if this is impossible, then, in default, to pay over the proceeds.—*In re Harthill*, vol. 4, p. 392.

## 4. When Taken by Mistake.

If the assignees are satisfied that property taken by them did not belong to the bankrupt, they should return it, without delay; if, however, they are in doubt, the claimant must seek redress by the appropriate remedy in the courts of the State.—*Noakes*, vol. 1, p. 592.

## CLAIM OF PRIORITY.

See PRIORITY.

### May be Determined at General Meeting of Creditors.

Where an execution-creditor has been enjoined from further proceeding in his execution by an injunction issued out of the Circuit Court in aid of the bankruptcy proceedings, he may, if he elect so to do, have his claim of priority of payment out of the funds (proceeds of sales of property upon which his execution is alleged to have been a lien) in the hands of the assignee, determined at a general meeting of creditors, under the 27th Section of the Bankrupt Act, subject to exception to the District Court sitting in bankruptcy.—*Dunkle & Driesbach*, vol. 7, p. 72.

CLERK.

See APPEAL,  
COST AND FEES.  
NOTICE,  
WAGES.

### 1. Taxation of Fees and Disbursements by.

A regular taxation by the clerk should be made of all the fees and disbursements in each bankrupt case.—*Anonymous*, vol. 1, p. 24.

### 2. Summons.

Summons may be furnished in blank to the Registers, signed and sealed by the clerk.—*In re John Bellamy*, vol. 1, p. 64.

### 3. Reference to Register on Petition for Discharge.

In every case of a petition for a discharge the clerk will enter a special order referring it to the proper register for proper proceedings to be had.—*John Bellamy*, vol. 1, p. 96.

### 4. Notices, Mailing Of.

When notices, Form 52, are served by mail, the clerk must mail them.—*In re John Bellamy*, vol. 1, p. 113.

### 5. Idem. Certificate Of.

The certificate of the clerk that he has mailed notice to creditors on a certain day, is sufficient evidence to that effect.—*In re William E. Townsend*, vol. 1, p. 216.

## COLLECTION OF DEBTS.

See DEBTS.

**1. Proceedings in Bankruptcy not to be Used for.**

A single creditor, whose debt is secured by a lien on lands of greater value than the amount of his debt, will not be permitted to abandon all remedies open to him for the collection of his debt, and use the Bankruptcy Court for the purpose.—*Avery v. Johann*, vol. 3, p. 144.

**2. Commercial Paper.**

The petitioner filed a demurrer to the answer. The court overruled the demurrer, on the ground that the answer prevented an issue of fact upon the suspension of payment of the alleged bankrupt's commercial paper. The court held further, that it was not the intention of the Bankrupt Act to force a debtor to pay the face of every piece of paper to which he has put his name, under penalty of being adjudged a bankrupt, regardless of any defense he might have against the same.—*Stapler*, vol. 9, p. 142.

## COMMENCEMENT OF PROCEEDINGS.

See PROCEEDINGS IN BANKRUPTCY.

**1. What is.**

Section 38th of the Bankrupt Act, concerning the commencement of proceedings in bankruptcy, construed to mean the filing of a petition sustained by proofs of the act of bankruptcy and of the claim of the petitioning creditor.

An order to show cause issued without such proofs is illegal and void, and does not constitute a commencement of proceedings in bankruptcy within the meaning of the act.—*In re Davis Rogers*, vol. 10, p. 444.

**2. Sale under Trust Deed after.**

A sale of land after proceedings commenced in bankruptcy against the debtor, under a deed of trust executed prior to said bankruptcy, is not void, but only voidable.—*McGready v. Harris*, vol. 9, p. 135.

**3. Assignment Relates back to.**

The assignment of the bankrupt's property will, by operation of law, relate back to the commencement of proceedings in bankruptcy, although the Register may

## COMMENCEMENT OF PROCEEDINGS.

have made a mistake in stating the time from which the deed should operate.—*In re William H. Pierson*, vol. 10, p. 107.

**4. Property of Bankrupt Held at.**

Only such property as bankrupt had at the time of the commencement of proceedings in bankruptcy, passed to and vested in the assignee.—*In re Charles G. Patterson*, vol. 1, p. 125.

**5. Vests Jurisdiction in Bankruptcy Court.**

The commencement of proceedings in bankruptcy, transfers to the United States District Court the jurisdiction over the bankrupt his estate, and all parties and questions connected therewith, and operates as a *supersedens* of the process in the hands of the sheriff, and an injunction against all other proceedings than such as might thereupon be had under the authority of that court, until the question of bankruptcy shall have been disposed of.—*Jones v. Leach et al.*, vol. 1, p. 595.

**6. Does not Dissolve Attachments over Four Months.**

The assignment of a bankrupt's estate, under Section 14, United States Bankrupt Act of 1867, does not dissolve an attachment of his estate made more than four months prior to the commencement of his proceedings in bankruptcy.—*Bowman v. Harding*, vol. 4, p. 20.

**7. Filing Opposition to Discharge.**

The filing of an opposition to a bankrupt's discharge is the commencement of an individual proceeding on the part of the creditor against the bankrupt.—*Creditors v. Williams*, vol. 4, p. 590.

**8. Stays Attachment Suits.**

The right of creditors to prosecute their attachment suits after the commencement of bankruptcy proceedings is taken away, and all attachments issued within four months are dissolved by the said act.—*Stevens*, vol. 5, p. 298.

**9. Services Performed Prior to.**

Services performed or moneys expended prior to the commencement of proceedings in bankruptcy cannot, by any section of the act, nor by any rule of law or equity, be construed to be in the aid of the proceedings in bankruptcy.—*In re Nounnan & Co.*, vol. 7, p. 15.

**10. Payments Made to Bankrupt after.**

Payments made to a debtor after a petition in bankruptcy has been filed against him, with a view of defeating the Bankruptcy Act, in any of its essential requirements, are void, and the persons by whom such payments are made, can be held to answer for the original demand of the assignee, whose title relates back to the date of the commencement of proceedings in bankruptcy.—*Babbitt, Assignee, v. Burgess*, vol. 7, p. 561.

**11. Proof of Debt does not Refer to.**

It was the intention of Congress to adopt the time of the actual adjudication of bankruptcy as the time at which a debt must exist in order to be provable, in contradistinction of the time of the commencement of the proceedings in bankruptcy.—*In re Henocksburgh & Block*, vol. 7, p. 37.

## COMMENCEMENT OF SUIT.

See SUITS.

**Filing Proof Equivalent to.**

Where a company becomes bankrupt, filing proof of debt with the assignee, is to be taken and held as equivalent to commencing suit against it.—*Fireman's Insurance Co.*, vol. 8, p. 123.

## COMMERCIAL PAPER.

See ACCOMMODATION NOTE,  
ENDORSER,  
FRAUDULENT SUSPENSION,  
SUSPENSION OF PAYMENT.

- (A.) *As an Act of Bankruptcy*, p. 283,
- (B.) *Definition of*, p. 284.
- (C.) *Defenses*, p. 285.
- (D.) *Proof of*, p. 286.

**1. Suspension for Fourteen Days is.**

Where a trader stops payment of his commercial paper and does not resume payment thereof within fourteen days, he commits an act of bankruptcy.—*In re Alfred L. Wells, Jr., ex parte H. B. Claflin & Co.*, vol. 1, p. 171.

**2. Not Necessary to Show Stoppage Fraudulent.**

It is not necessary to show the stoppage of payment of commercial paper was fraudulent; suspension of payment and non-resumption within fourteen days is all

that is contemplated by this provision of the Bankrupt Act.—*In re Walter C. Cowles* vol. 1, p. 280.

**3. Contra.**

The suspension of payment by a manufacturing company, and non-resumption of payment within fourteen days, does not, of itself, constitute an Act of Bankruptcy, unless such suspension is fraudulent.—*In re Jersey City Window Glass Company, ex parte R. B. Wigton*, vol. 1, p. 426.

**4. Idem.**

A suspension of payment of commercial paper for fourteen days is not, in the absence of fraud, an Act of Bankruptcy.—*In re William Leeds*, vol. 1, p. 521.

**5. Must be of Paper Given in Commerce.**

To constitute an Act of Bankruptcy, the fraudulent stoppage and non-resumption of payment must be of commercial paper given by the debtor in his character as a merchant or trader.—*McDermott Bolt Co.*, vol. 3, p. 128.

**6. Or Founded upon the Custom of Merchants.**

The words "commercial paper," in the 39th Section of the Bankrupt Act, include not merely paper given by a merchant in the direct course of his business, but all paper governed by the rules which have their origin in, and are founded upon the custom of merchants.—*In re Chandler*, vol. 4, p. 213.

**7. Due Bills by Corporations.**

Where a corporation was charged with fraudulently stopping, and not resuming payment within fourteen days, of its commercial paper, consisting of two instruments; one a promissory note signed by the secretary and president, reading: "On demand, after date, we, The McDermott Patent Bolt Manufacturing Company, promise to pay to the order of John E. Walsh, three hundred dollars at the office of the Company, value received," and the other in form a Due Bill, and reading: "Received, New York, Nov. 7, 1868, from Mr. J. C. Brinck, two hundred dollars for the McDermott Patent Bolt Manufacturing Company, value received, as a loan for their use, the same to be returned, due on demand."

*Held*, That the said instruments did not

constitute commercial paper within the meaning of the Act, and no act of bankruptcy had been committed by failure to pay the same.—*McDermott Bolt Manufacturing Co.*, vol. 3, p. 128.

### 8. Suspension before Passage of Act.

A debtor does not commit an act of bankruptcy who stops payment of a note given long before the passage of the bankrupt Act, and does not resume payment subsequent thereto, up to the filing of the petition in bankruptcy. A note payable in money is commercial paper, although at the time of its execution Confederate currency was the only medium of exchange in the section of the State where the note was given. Petition dismissed.—*Mendenhall v. Carter*, vol. 7, p. 320.

### 9. Continued Non-payment of, after Maturity.

A bankrupt applied for and obtained, in the United States District Court, an order to show cause why all proceedings should not be set aside and vacated, upon the ground that the act of bankruptcy set forth in the creditor's petition was committed more than six months before the filing of the petition. The court, on the hearing, ordered the adjudication of bankruptcy and all subsequent proceedings to be vacated, but making no provision as to costs. From this order the petitioning creditor petitioned to the Circuit Court for a review and reversal of such order.

*Held*, That the continued non-payment of commercial paper by a merchant or trader is, as it were, a continuous act of bankruptcy and not such a final, completed and definite act that it could not, after the lapse of six months, be made the basis of an adjudication.—*In re Jacob Raynor*, vol. 7, p. 527.

### 10. Allegation of.

The allegation of stoppage and suspension of payment on a certain day, upon commercial paper which was made and dated within the six months next preceding the actual filing of the petition, connected with the allegation that payment of the commercial paper (a due bill) had been demanded at different times, and that the respondent had failed to make such payment, was equivalent to an allegation of a

demand for payment on that day.—*In re Chappel*, vol. 4, p. 540.

### (A.) Under Amendment of July 14th, 1870.

#### 11. Suspension of, by any Person.

Under the 32th Section of the Bankruptcy Act, as amended by the Act of July 14th, 1870, providing for putting into involuntary bankruptcy a person "who, being a banker, broker, merchant, trader, manufacturer or miner, has fraudulently stopped payment, or who has stopped or suspended and not resumed payment of his commercial paper within a period of fourteen days," a person who is not a banker, broker, merchant, trader, manufacturer or miner, is liable to be put into involuntary bankruptcy, if he has stopped or suspended and not resumed payment of his commercial paper within a period of fourteen days.—*In re the Hercules Mutual Life Assurance Society*, vol. 6, p. 338.

#### 12. Fraudulent Stoppage by Banker, etc.

Under the Section, as so amended, a person cannot be put into involuntary bankruptcy for the fraudulent stoppage of payment, unless he is a banker, broker, merchant, trader, manufacturer or miner; but if he is one of those classes, he may, for the fraudulent stoppage of the payment of his debts, be put into bankruptcy at once, without waiting fourteen days, and without his stoppage being a stoppage of the payment of commercial paper.—*Ibid.*, vol. 6, p. 338.

### (B.) Definition of.

#### 13. Negotiable Paper.

Commercial paper in this Section means paper which, by the law governing the contract, has the ordinary qualities and incidents of negotiable paper in the sense of the law merchant.—*In re John A. Hollis*; *In re J. E. Kenney et al.*, vol. 3, p. 310.

#### 14. Given by Merchant, Trader, etc.

When a man enters the commercial community as a merchant, trader, banker, broker, manufacturer, or miner, he assumes all the responsibilities which attach to his calling. One of these is to take care of his commercial paper, whether made before or after he commenced business; hence, if obligations given before, but falling due after he engaged in business, are allowed to remain unpaid for fourteen

days after maturity, the maker can be adjudged a bankrupt.—*In re Carter*, vol. 6, p. 299.

#### 15. By Firm of Manufacturers.

The negotiable paper of a firm of manufacturers is commercial paper within the meaning of the Act, regardless of the purpose for which it was given.—*In re Kenyon & Fenton*, vol. 6, p. 238.

#### 16. Note for Absolute Amount.

A note executed in Cincinnati, Ohio, for the unconditional payment of a certain sum of money, and payable to the order of the payee is "commercial paper" within the meaning of the 39th Section of the Bankrupt Act.—*Hinsheimer et al. v. Shea & Boyle*, vol. 8, p. 187.

#### 17. Governed by Law Merchant.

The term "commercial paper," as used in the Bankruptcy Act, denotes bills of exchange, promissory notes, negotiable bank cheques, paper governed by those rules that have their origin and are established upon the customs of merchants known as the law merchant.—*Nicodemus*, vol. 8, p. 230.

#### 18. By Banker, Broker, etc.

To be a debtor's commercial paper within said Clause 9, the debt which the paper represents must have been incurred by him in his character of banker, merchant, or trader; whether as principal or otherwise, is immaterial.—*Nicodemus*, vol. 8, p. 230.

#### 19. Accommodation Indorser.

An accommodation indorsement on a note does not make it commercial paper as to the accommodation indorser.—*Innes v. Carpenter*, vol. 4, p. 412.

#### 20. Accommodation Maker.

Accommodation paper is not *per se* commercial paper, in the sense of the Bankrupt Act, as regards the accommodation maker.—*In re Clement*, vol. 9, p. 57.

#### 21. By Solvent Partner to Close Business.

Notes given by a solvent partner, after the dissolution of the firm, to one of the creditors who had assisted in starting and dissolving the firm, and by way of settlement, will not be considered as the commercial paper of such partner, he not being by business a merchant, and having entered into the partnership to benefit a relative, and closing it up as soon as it was dis-

covered to be unprofitable.—*Weaver*, vol. 9, p. 132.

### (C.) Defenses.

#### 22. Payee Civiliter Mortuus.

The maker of a negotiable note given to a bankrupt after his bankruptcy, for the rent of property belonging to the assignee in bankruptcy, will not be allowed to set up this defense against a purchaser in good faith before maturity.—*Maxwell v. McCune*, vol. 10, p. 307.

#### 23. Usury on Accommodation Paper.

Mere accommodation paper can have no effect or legal existence until it is transferred to a *bona fide* holder, and it follows that the discounting by a bank, at a higher rate of interest than the law allows, of paper of this character, made and given to the holder for the purpose of raising money upon it, in its origin only a nominal contract on which no action could be maintained by any of the parties to it if it had not been discounted, is usurious and not defensible as a purchase.—*Tiffany, Trustee, v. The Boatman's Saving Institution*, vol. 9, p. 245.

#### 24. Given in Violation of Bankrupt Act.

It is no defense to an action on a promissory note that it was given and accepted in payment for a precedent debt, with knowledge on the part of the creditor receiving the note that his debtor was insolvent; that such note was given with a view to prefer this creditor; and that the debtor was, soon after the giving of the note, adjudicated a bankrupt.—*Conner v. Parker*, vol. 4, p. 718.

#### 25. Where Defense made in Good Faith, Suspension is not Act of Bankruptcy.

Where it is shown that a person who is possessed of a large property has not suspended payment of his debts and commercial paper generally; that he is prosecuting a regular business wholly unconnected with the transactions in respect to which a particular note was given; that he failed to pay the note in question, under advice of counsel, because of a good defense thereto, namely, want of consideration, such person will not be adjudged a bankrupt because of the non-payment of such note.—*In re Manheim*, vol. 7, p. 342.



**26. Idem.**

A man should not be adjudged bankrupt for non-payment of commercial paper, if he has reasonable ground to believe that he is not liable upon it.—*In re Munn*, vol. 7, p. 468.

**27. Idem.**

It is not the intention of the Bankrupt Act to force a debtor to pay the face of every piece of paper to which he has put his name, under penalty of being adjudged a bankrupt, regardless of any defense he might have against the same.—*In re Staplin*, vol. 9, p. 142.

**28. Failure of Consideration.**

A gift is not in itself a sufficient consideration to support a promise of payment, even if expressed in a note, neither is a mere moral consideration sufficient to support a promise to pay. A note given in place of a lost note, if there was no consideration for the making of the original (or lost) note, whether a voluntary gift, is not a sufficient claim on which to base a petition for bankruptcy proceedings.—*In re Cornwall*, vol. 4, p. 400.

**29. Failing to Pay a Single Note.**

A debtor may, under certain circumstances, be considered as really having suspended payment generally of his commercial paper, although but a single piece of paper is shown to have lain over unpaid for fourteen days. Petition dismissed with costs.—*In re The Hercules Mutual Life Assurance Society*, vol. 6, p. 338.

**30. Solvent Indorser not Liable where Bankrupt Maker Pays in Fraud of Act.**

An indorser of a note who receives none of the proceeds of the same and whose contingent never becomes an absolute liability, cannot be compelled to pay to the bankrupt's assignee the amount of the note paid by the bankrupt to the holder and while he, the debtor, was still carrying on business.—*Bean v. Laflin*, vol. 5, p. 333.

**31. Payment by Maker when Insolvent, not Protected by Solvency of Indorser.**

A payment by an insolvent, which would otherwise be void as a performance under Sections 35 and 39 of the Bankrupt Law, is

not excepted out of that provision because it was made to a holder of his note over due, on which there was a solvent indorser, whose liability was already fixed by protest and notice.—*Bartholow et al. v. Bean*, vol. 10, p. 241.

**(D.) Proof of in Bankruptcy.****32. By Holder after Partial Payment by Indorser.**

The holder of a promissory note may prove it in full against the estate of the promisor, in bankruptcy, notwithstanding he has received a sum of money from an indorser in discharge of the indorser's liability.

In such a case the holder of the note is a trustee to collect the whole note, or so much as he can collect, and to pay himself what remains due to him, and the remainder to the indorser.—*Ex parte Talcott. In re Souther*, vol. 9, p. 502.

**33. By Indorsee.**

Commercial paper, acquired in good faith before maturity, may be proved in bankruptcy by the indorsee upon showing a valid consideration paid by him; and such showing, in such a case, will be held to be a compliance with Section 22 of the Bankrupt Act, which requires the proof of debt to set forth the *consideration* of the demand.—*In re The Lake Superior Ship Canal Railroad and Iron Co.*, vol. 10, p. 76.

**34. By Corporation Ultra Vires.**

An application was made to expunge the proof of debt of the People's Safe Deposit and Savings Institution, on certain notes discounted for the bankrupts in its regular course of business.

*Held*, That the notes in question were not valid, for the reason that the said savings institution was not authorized by law to employ its funds in discounting commercial or accommodation paper, and that the acts of its officers in discounting the notes upon which its claim is based, were in direct violation of the provisions of the restraining laws of the State.—*In re Jaycox & Green*, vol. 7, p. 578.

**35. When Drawn by Co-partner Fraudulently.**

Notes drawn by one partner in the firm-name, apparently in the course of partnership business, without *mala fide* or actual



knowledge by the holder, of want of authority or intended misapplication, entitle the holder to their allowance against the bankrupt estate of the firm.—*Bush v. Crawford, Assignee*, vol. 7, p. 299.

**36. When Security Given by Wife.**

Security for the payment of a note, by way of a deed of trust, given on the property of the wife, by the husband and wife jointly, is security within the meaning of the Bankrupt Act, and such claim should be allowed as a secured demand, although the wife may have died leaving heirs.—*In re Hartel*, vol. 7, p. 559.

*Payment of.*

**37. Adjudicated after Payment of Note.**

Any creditor may have his debtor adjudged a bankrupt, although the note which had remained unpaid for a period of fourteen days, and which constituted the act of bankruptcy, was paid before the filing of the petition, if the debtor's whole liabilities were not paid at the commencement of bankruptcy proceedings.—*In re Ess & Clarendon*, vol. 7, p. 188.

*Explanation of.*

**38. Of Words Descriptio Personae.**

An obligation given by an officer of a corporation, signing his own name, and affixing his official position as *descriptio personae*, may be shown by parol to be the obligation of the corporation.—*In re Southern Minnesota R. R. Co.*, vol. 10, p. 86.

COMMISSION MERCHANT.

See FIDUCIARY DEBT,  
DISCHARGE.

**1. Fiduciary Debt.**

S. was indebted to R. for goods deposited with S. in New Orleans, in 1860, for sale on commission. R. obtained judgment, and in September, 1867, while S. was in New York City, caused his arrest. S. sued out a writ of *habeas corpus*, to be discharged by the Bankruptcy Court, on the ground that the debt was provable and dischargeable in bankruptcy.

*Held*, That the debt was created while S. acted in a fiduciary character, and was not

dischargeable in bankruptcy.—*James W. Seymour*, vol. 1, p. 29.

**2. Idem.**

A commission merchant acts in a fiduciary character, and the trust attaches to the goods consigned to him for sale on commission within the meaning of Section 33 of the United States Bankrupt Act of 1867.—*Lenke v. Booth*, vol. 5, p. 851.

COMMISSIONER.

See PROOF OF DEBT.

**1. Cannot take Proof in Same District where Proceedings Pending.**

Commissioners of the Circuit Court of the United States are not authorized to take proofs of debts due to creditors residing in district where proceedings are pending.—*In re Haley*, vol. 2, p. 36.

**2. Contra, Limited only by Residence of Creditor.**

As the law now stands, proof of debts in bankruptcy may be taken by a Register or by a commissioner, in all cases, whether of a resident or non-resident creditor, or whether such commissioner holds his office in the same town with the Register or not, the only limitation being that it shall be taken before a Register or commissioner of the same judicial district in which the creditor resides or in which the proceedings are pending.—*In re Merrick*, vol. 7, p. 459.

COMMITTEE OF CREDITORS.

See CREDITORS.

**1. More than Two when one a Trustee.**

It is a substantial objection to the approval of a resolution of creditors, under Section 43 of the act, appointing a trustee and committee to supervise his action, that the committee is composed of only two, of which one is the trustee.—*In re Stillwell*, vol. 2, p. 526.

**2. One Claiming Preference Improper.**

A creditor who claims a preference, which preference is contested by the other credit-

ors, is an improper person to be one of the committee selected according to Section 43 of the Bankrupt Act. — *In re Stuyvesant Bank*, vol. 6, p. 272.

### 3. Entitled to Reasonable Compensation.

The committee of creditors provided for in the 43d Section of the Bankrupt Act are entitled to compensation for their services, although the statute is silent on the subject.

It should be limited to such an amount as will afford a reasonable compensation, for the services required and rendered, to a person of ordinary standing and ability, competent for such duties and services; and should not be based upon the usages or rates of profit which prevail in any branch of commercial or other business, nor upon the special qualifications or standing of the person who may happen to perform the services. — *In re Treat*, vol. 10, p. 310.

## COMMON CARRIER.

See CORPORATION.

### Are not "Traders"—Mortgage by.

A common carrier is not a trader, and a mortgage by a railroad company is not an act of unusual character, i. e., out of the ordinary course of its business within the meaning of the Bankrupt Act. — *Union Pacific R. R. Co.*, vol. 10, p. 178.

## COMPENSATION.

See COST AND FEES.

### 1. Apportionment between the Bankrupt and Assignee.

When the bankrupt under a general contract has rendered partial service, but has not completed the contract prior to the filing of the petition, but subsequently fulfills the same, unless the contract for payment was contingent upon full performance of the services, the compensation will be apportioned between the assignee and the bankrupt, in proportion to the value of the services rendered before and after the bankruptcy. — *In re Jones*, vol. 4, p. 347.

### 2. Of Assignee for Legal Expenses.

An assignee is not at liberty to charge the assets of the estate in his hands for

## COMPOSITION.

professional and clerical services, rendered him in the execution of his trust, until the same shall have been first duly allowed by the court. Before incurring expenses for professional services and clerk hire, an assignee must apply to court for proper authority; if, however, he has incurred and paid such expenses, or demands compensation beyond what he is entitled to by Section 28 of the Bankrupt Law, he must accompany his final account with a separate and distinct application for an allowance of the charges, and submit to such examination, and furnish such proofs as may be required touching the necessity of such disbursements and services. — *In re Noyes*, vol. 6, p. 277.

### 3. Assignee Appointed under State Law.

Assignees under the State Law cannot receive allowance for attorney's fees, nor compensation for their own services, where the debtor has been adjudged a bankrupt. — *In re Cohn*, vol. 6, p. 379.

### 4. Committee of Creditors.

The committee of creditors provided for in the 43d Section of the Bankrupt Act are entitled to compensation for their services. — *In re Treat*, vol. 10, p. 310.

## COMPOSITION.

See ASSIGNEE,  
COMPROMISE,  
PREFERENCE.

### 1. Estoppel.

When one accepts a certain sum as a compromise, and he is not led to believe that he was getting as much as others, and he accepts the notes of his debtor's purchaser in part payment, he cannot be sustained in a petition against the debtor alleging a preference thereby under the Bankrupt Act. — *In re Munger & Champlin*, vol. 4, p. 295.

### 2. Continuing Business Pending Effort to Make.

Where there is no fraudulent intention, a dealer may, although insolvent, continue to sell his stock at retail, and endeavor to effect, if possible, a compromise with his creditors. — *Munger & Champlin*, vol. 4, p. 295.

### 3. Efforts by Friends to Compromise Debts not a Fraud on the Act.

Efforts by the bankrupt's friends to compromise and buy up his debts, and stop proceedings in bankruptcy, are no fraud upon the Bankrupt Act, and are no reason why the debts should be postponed and not voted upon for the election of assignee.—*Frank*, vol. 5, p. 196.

### 4. Not a Preference when Accepted by all.

The assignees of certain bankrupts brought a bill against one of their creditors alleging that he had seized and sold on execution certain property, thereby receiving a preference, having reasonable cause to believe, at the time the levies were made, that the bankrupts were insolvent and that a fraudulent preference was intended.

The evidence showed that bankrupts had failed some months before the filing of the petition against them, and that between the failure and the seizure of the property, bankrupts were making compromises, as their debts matured, at the rate of forty-five cents on the dollar, nothing appearing to show that this creditor had reasonable cause to believe that there were any creditors not compromised with, and over whom he could obtain a preference.—*Warren and Rowe, Assignees, v. Tenth National Bank et al.*, vol. 5, p. 479.

### 5. Obtained on Misrepresentations of Agent.

A debtor cannot be allowed to have the benefit of a composition with his creditors which was confessedly procured by the false representations of his agent, upon the ground that the agent was ignorant of the truth and made the representations in good faith.—*Elfelt et al. v. Snow et al.*, vol. 6, p. 57.

### 6. Original Debt Revived on Failure of

Creditors who have received more than the amount stipulated in the composition deed without the knowledge of the other creditors, are not thereby barred from bringing an action against the debtor on their original obligation when such action is brought on the ground that the compo-

sition deed was fraudulently procured.—*Elfelt et al. v. Snow et al.*, vol. 6, p. 57.

### 7. Seeking, must Act in Good Faith.

A debtor who seeks to make a composition of his debts by the payment of a part only of what he owes, is not bound to make any representations concerning his assets or resources; but he must act in good faith, and, if he does make any such representations, he must make them truly or he will be guilty of fraud.—*Elfelt et al. v. Snow et al.*, vol. 6, p. 57.

### 8. Idem.

Parties who sign composition deeds must do so in good faith. Secret preferences, paid as inducements to obtain signatures of creditors to composition deeds, can be recovered by the debtor himself, or by injured creditor, or by an assignee in bankruptcy, who represents both debtor and creditor. Such recovery may be at law or in equity.

It is no defense to such an action that the composition deed was invalid, because not signed by all the creditors, pursuant to its terms, it appearing that the greater part of the creditors believed that the composition had been signed by all the creditors in good faith.—*Bean, Assignee, v. Brookmire & Rankin*, vol. 7, p. 568.

### 9. Idem.

In a general composition between a debtor and his creditors, the composition deed is as much an agreement between the several creditors, as to each other, as it is between them respectively and the debtor. In such deed the most scrupulous good faith must be observed by all parties. A secret arrangement between a creditor signing the composition deed and the debtor is void.

On grounds of public policy the courts will not enforce such agreements, and, where carried into execution, the money or other thing of value obtained thereby may be recovered by the other creditors, by the debtor himself, or by his assignee in bankruptcy. This rule applies equally where the creditor receiving the advantage signed the composition deed last as well as first.

Where all the creditors had compro-

mised by taking notes at six months for seventy per cent., and the last creditor had made it a secret condition of his acceptance of the notes that the debtor should immediately discount the compromise notes at fifty per cent. cash, which was accordingly done,

*Held*, That the assignee was entitled to recover the amount so paid.—*Bean v. Am-sink*, vol. 8, p. 228.

#### 10. Status of Claims Purchased to Effect Compromise.

Where nearly all the debts against a bankrupt co-partnership, composed of three co-partners, have been purchased in the interest of two of the co-partners by two of their friends, to whom the money for such purchase was furnished by those partners, the third partner not contributing, objects to the proof of the purchased claims as illegal; although it is not denied but that they were originally *bona fide* claims against the co-partnership,

*Held*, That a decree will be entered providing for the payment in full by the assignees of the unpaid and unpurchased proved debts with interest, for the payment into court of the amount of the unpaid unproved debts with interest, for the payment of the commission of the assignees, and the charges, fees, disbursements, and expenses of their attorney and counsel, and the fees of the Register and clerk; for the payment to the two purchasers (friends of two of the bankrupts) of the amount paid out by them in the purchase of the co-partnership debts, together with interest for the transfer of the remainder of the estate by the assignee to the bankrupts, jointly, by proper instruments.—*In re Lathrop et al.*, vol. 5, p. 43.

#### 11. Preference in is Act of Bankruptcy.

A compromised with all his creditors, except B, whom he proposed to pay in full. B received, as security, an assignment of two judgments, and also a deed for a lot, which together were supposed to exceed in value the amount of B's claim. Whatever was paid on the judgments was to be credited on the claim, and the lot returned within twelve months from the date of the transfer, providing the indebtedness was all liquidated. More than six

months after the assignment a petition in bankruptcy was filed against A by B, alleging that he had made a disposition of his property out of his usual and ordinary course of business, with intent to hinder and delay his creditors,

*Held*, That A made a disposition of his property with the intent to delay, hinder, and defraud his creditors, and that he had committed an act of bankruptcy.—*Esfort & Petring v. Greeley*, vol. 6, p. 433.

#### 12. Withdrawing Consent to Discharge.

When a creditor has once given his assent in writing, and the bankrupt has acted upon it, and other creditors have given theirs, and presumptively been influenced by each other's action in this respect, and the assent of the requisite number is obtained and filed, a creditor has no absolute right on the day fixed for the hearing to withdraw and cancel his assent.—*In re Brent*, vol. 8, p. 444.

#### 13. Sharing Dividends.

Where money was advanced by A to B for capital in trade, with the understanding that B should not be pressed for payment, but with no binding contract delaying or deferring payment, and no misrepresentation was made to B's creditors, A was held entitled to share in the dividends of B's estate under a composition deed in the usual form.—*Lane & Co. v. Boynton*, vol. 10, p. 135.

### COMPROMISE.

See ASSIGNEE,  
COMPOSITION,  
PROOF OF DEBT.

#### 1. Application for at First Meeting.

Where counsel representing creditors at the first meeting of creditors offered a resolution that the court be requested to make an order authorizing the assignee to compromise and compound certain debts due the *bankrupt's* estate, by and with the consent of a committee of three creditors therein named, which resolution was voted for by all save two creditors,

*Held*, That the said order is not warranted by any provision of the Act, or by General Order 17.—*In re H. Dibble et al., Involuntary Bankrupts*, vol. 3, p. 72.

**2. Agreement to Compromise not a Bar to Filing Petition.**

The application of creditors, other than the petitioning creditors in a bankruptcy proceeding, for an order annulling the adjudication on the ground that there was an agreement of compromise preceding the commencement of bankruptcy proceedings, to which agreement the petitioning creditor was a party, must be denied.—*In re Bush*, vol. 6, p. 179.

CONCEALMENT.

See ACT OF BANKRUPTCY.

**1. Transfer to Wife.**

A bankrupt must be held to have willfully sworn falsely in the affidavit annexed to his inventory where he states therein that he has no assets, when he has concealed his property derived from profits in the firm of which he is really a partner, by covering them (the profits) up in the hands of his wife. He is, further, guilty of fraud in not delivering such property to his assignees. Discharge refused.—*In re Robert C. Rathbone*, vol. 1, p. 536.

**2. Failure to State in Schedules Property Fraudulently Conveyed.**

Property conveyed in fraud of the creditors of grantor, as between grantor and grantee, vests the title in the grantee, and must be returned in his schedules of property when he has been adjudged a bankrupt, and if not so returned, he is guilty of concealment.—*In re O'Bannon*, vol. 2, p. 15.

**3. Acts of, must be Intentional.**

Where a specification in opposition to the discharge of a bankrupt is, that the bankrupt has concealed his effects, or that he has sworn falsely in his affidavit annexed to his inventory of debts, it must be shown that the acts were intentional in order to preclude a discharge.—*Re W. Wyatt*, vol. 2, p. 288.

**4. Evidence in Support of Charge.**

Where specifications in opposition to the discharge of a bankrupt set forth that he had concealed property in the hands of his brother, and the only evidence in support thereof being the testimony of the bank-

rupt and his brother, from which badges and indicia of fraud were deduced, and not overborne by the positive testimony,

*Held*, That the specifications were sustained and discharge refused.—*In re Goodridge*, vol. 2, p. 324.

**5. In Itself an Act of Bankruptcy.**

If the debtor has property concealed, the assignee is the proper person to receive it for the benefit of the general creditors.—*In re James L. Fowler*, vol. 1, p. 680.

Such a concealment would be itself an act of bankruptcy, and is no ground for refusing to adjudge the debtor a bankrupt on his own petition.—*Id.*, vol. 1.

**6. Title to Property.**

The concealment denounced by the 29th Section of the said Act embraces a concealment of title to property as well as the hiding from view of the property itself.—*In re Ernest Husson*, vol. 2, p. 438.

**7. Names of Creditors.**

Where an amended answer set up a discharge in bankruptcy, and objection was made on the ground that claimants' names had been omitted from the bankrupt's schedules of creditors. Objection sustained.—*Payne et al. v. Able et al.*, vol. 4, p. 220.

**8. Conversion of.**

There is no concealment where a debtor makes a *bona fide* conversion of his property, and shows good faith in respect to the care of the money received therefrom.—*Fox v. Eckstein*, vol. 4, p. 373.

**9. Proceeds of Sale.**

A debtor attempted to compromise with his creditors of twenty-five per cent. He represented that he had several promissory notes amounting to over nine hundred dollars. Some days after, the order to show cause, with the injunction, was served. The bankrupt swore that at the time of the service of the injunction he had sold the notes and spent most of the proceeds.

The Register ordered the bankrupt within five days to hand over to the assignee the amount of the notes, with interest from the date of the adjudication, or in default thereof, an attachment issue against him as for a contempt, which order was duly approved by the judge.—*In re Kempner*, vol. 6, p. 521.



**10. As Evidence of Fraudulent Intent.**

A bankrupt was possessed of two hundred and forty-eight thousand dollars worth of property, and owed debts amounting to thirty-one thousand dollars. He made a voluntary conveyance of one hundred and ninety-two thousand dollars to his wife, and kept these conveyances unrecorded until his failure.

*Held*, That this concealment evidenced such a wrongful intent as to avoid these conveyances.—*Beecher v. Clark*, vol. 10, p. 385.

**11. Firm Books of Account.**

If a bankrupt has the actual possession of a joint estate and joint books of account, he must disclose them to his separate assignees, and if he willfully fails to do so, is not entitled to his discharge.—*In re Beal*, vol. 2, p. 587.

**12. Levy on Property after Discharge.**

Where a creditor was not named in bankrupt's schedules, and such creditor, after discharge granted in bankruptcy, attached, by garnishee process, property of the bankrupt shown in evidence to have been concealed from the Bankruptcy Court,

*Held*, That the certificate of discharge in bankruptcy did not bind the creditor, and was no defense to his action.—*Barnes v. Moore*, vol. 2, p. 573.

**CONDITIONAL DELIVERY.**

See ASSIGNEE.

**Title not Conveyed by Contract for.**

A contract for the conditional delivery of goods to a debtor gives his creditors no title to them until the account for the same is paid.—*Sawyer et al. v. Turpin et al.*, vol. 5, p. 339.

**CONFEDERATE MONEY.**

See MONEY,  
REBELLION,  
WAR.

**1. Loan of, not Provable Debt.**

A debt incurred by the loan of Confederate treasury notes is not provable in

bankruptcy.—*In re Jonathan J. Milner*, vol. 1, p. 419.

**2. Note Payable in Provable Debt.**

Proof of a note payable "*in current money of the State*" in which it is made, is, if not otherwise open to objection, allowable; and even though the State in which the note is made payable should at the maturity of the note be in rebellion, and it be claimed that such a demand should not be proved in bankruptcy as payable in lawful currency of the United States, but in the State Treasury notes of the State in which the note was made, the objection cannot be sustained, and the owner of the note will be entitled to have his debt estimated at its face, with interest, in lawful money.—*In re Whittaker*, vol. 4, p. 160.

**3. Note Payable in Commercial Paper.**

A note payable in money is commercial paper, although, at the time of its execution, Confederate currency was the only medium of exchange in the section of the State where the note was given.—*Mendenhall v. Carter*, vol. 7, p. 320.

**4. Accepting Payment in, Extinguishes Debt.**

The plaintiff, at various times prior to and on the 16th day of June, 1862, had made deposits with the Bank of North Carolina. On the 13th day of March, 1864, his account with the bank was made up, and the sum of \$5,253.69 ascertained to be due to him. On that day Holleman drew and delivered to the bank his cheque, in the usual form, for the full sum due to him, and accepted in part payment for the cheque five coupon bonds, issued by the State of North Carolina, on the 1st day of January, 1863, which were issued in aid of the rebellion.

*Held*, That such bonds, when accepted by a creditor in payment of his debt, and while they are of value as a medium in the money markets, constitute a valid medium for the payment of a debt, provided the contract or engagement in which they are used was not a contract made in aid of the rebellion.—*Holleman v. Dewey, Assignee*, vol. 7, p. 269.



CONFESSION OF JUDGMENT.

See ACT OF BANKRUPTCY,  
JUDGMENT.

1. Act of Bankruptcy by Insolvent.

An insolvent debtor commits an act of bankruptcy by confessing judgment, and allowing his property to be taken on an execution issued thereupon, with intent to give a preference to a creditor. His insolvency, or contemplation of insolvency, must be averred and shown.—*In re Asa W. Craft*, vol. 1, p. 378.

2. May be Made by one not Insolvent.

Where a debtor, not being insolvent, borrowed money and gave bond with warrant of attorney to the creditor to confess judgment, and he took judgment with notice of subsequent bankruptcy and levy made,

*Held*, The judgment was good against, and should be paid out of, the assets in court of the proceeds of sale of bankrupt's property.

Judgments obtained against a debtor at the time insolvent, by creditors not shown by the evidence to have had reason so to believe him.

*Held*, To be good against assets.—*In re J. B. Wright*, vol. 2, p. 490.

3. To Enable Debtor to Continue Business.

In deciding whether giving a warrant to confess judgment is an act of bankruptcy, the character of the alleged bankrupt's business may be taken into consideration; and where it appears that the purposes of the warrant of attorney may have been to enable the debtor to continue in business, and that there was no intention to defeat or delay the operation of the bankrupt law, it is not a sufficient ground for an adjudication in bankruptcy.—*In re William Leeds*, vol. 1, p. 521.

4. Denial of Intent to Prefer.

The denial of a debtor, in his answer to a petition of bankruptcy filed against him, is not sufficient to prevent adjudication when it admits the confession of a judgment, although it denies that there was a fraudulent intent to give a fraudulent preference; for such negative allegation implies that the judgment was conferred with an intent to give a preference, al-

though not a fraudulent one.—*In re Sutherland*, vol. 1, p. 531.

5. Not Void for Want of Sufficient Statement of Facts.

A judgment by confession is not void under the code for want of a sufficient statement of the facts out of which the indebtedness arose, except as to the creditors who have acquired a lien upon the debtor's property before a sale upon the confessed judgment. *Quære*, whether such judgment is even then void if it can be shown by evidence *aliunde*, that the judgment was in fact given in good faith and for an actual debt?—*Fuller*, vol. 4, p. 116.

6. Given as Collateral to other Security.

When a debtor confessed a judgment within four months previous to the filing of the petition against him, being at the time insolvent, and the creditor having reason to believe him so, though there was, as a consideration, a pre-existing debt,

*Held*, To be in fraud of the Bankrupt Act, being in the category of acts prohibited in Section 35, vol. 4.

The fact that the judgment was taken as a collateral for the security, aggregate of several other judgments, regular and valid, and to facilitate their collection, does not affect their validity.—*Vogle v. Lathrop*, vol. 4, p. 439.

7. Entering Judgment against Absconding Debtor.

Where a creditor who has been carrying and renewing a note, enters up judgment by virtue of a warrant of attorney attached, and issues execution, the debtor having three days before absconded, leaving his property and creditors unprotected, the business community and newspapers being in speculation as to his departure and means, and the creditor having come to the conclusion that "there was something wrong," and that his interests as well as those of the surety on the note require that judgment should be entered, he obtains such preference as is avoided by the 35th and 39th Sections of the Bankrupt Act.—*Golson et al. v. Neihoff et al.*, vol. 5, p. 56.

8. Validity Determinable at Time of Entry.

Where a debtor gave to his creditors several bonds with warrants of attorney to

confess judgments, for money lent in good faith, when neither the borrower nor lender had reasonable cause to believe that the debtor was insolvent or intended any fraud upon the provisions of the Bankrupt Act,

*Held*, That judgments subsequently entered thereon, within four months of the date of filing petition in bankruptcy, and when both the debtor and the creditors had cause to believe the debtor to be insolvent, and intended a fraud upon the provisions of the act, were fraudulent preferences.—*In re F. C. Lord*, vol. 5, p. 318.

#### **9. Idem.**

A confession of judgment, if otherwise invalid under the 35th Section of the Bankrupt Act, cannot be valid for any such reason as that the power of attorney bore date more than four or six months before any actual mortgage or transfer.—*Hood et al. v. Karper et al.*, vol. 5, p. 358.

#### **10. Idem.**

Where, on the loan of money, the lender takes a confession of judgment, he cannot afterwards, on learning of the insolvency of the debtor, perfect his security, as entering the confession of record.—*Clark, Assignee, v. Iselin et al.*, vol. 9, p. 19

#### **11. For Contingent Debt.**

Section 382 of the Code of Procedure, New York, makes no change in the then existing laws as to the character of the liability, existing or contingent, for which a judgment might be confessed.

A judgment may be confessed for money contingently to become due.—*Cook et al.*, vol. 9, p. 155.

#### **12. Before June 1st, 1867.**

A confession of judgment entered before the 1st day of June, 1867, but after the enactment of the Bankrupt Law, is a fraudulent preference, when both parties knew of the insolvency of the debtor.—*Traders' Nat. Bank of Chicago v. Campbell, etc.*, vol. 6, p. 353.

### **CONFUSION OF GOODS.**

See **TRUSTEE.**

#### **Rights of Bailor Affected by.**

Where a bailee, prior to his bankruptcy, mixes the property bailed (wheat) with his own, so that the identical property cannot

be distinguished, the bailor can only prove as a general creditor and share *pro rata* against the estate in bankruptcy.—*Mosely, Wells & Co.*, vol. 8, p. 208.

### **CONGRESS.**

See **AMENDMENT.**

#### **1. May Modify or Repeal Rules of Evidence.**

Congress may, within the limits of federal jurisdiction, modify or repeal the existing rules of evidence, and any such modification should not be left to inference, but should be the subject of clear and unambiguous enactment.—*Hunt*, vol. 2, p. 540.

#### **2. Power over Bankruptcies Limited by Uniformity.**

The uniformity contemplated by the constitutional restriction was as to the general policy and operation of the law, that no preferences should be created, but the property uniformly or equally distributed among all creditors, that all questions under the act should be decided in the same courts, that the modes and proceeding in all the courts should be uniform. Congress by virtue of the power given it to pass a bankrupt law, has authority, not only to impair, but to destroy the obligation of contract.—*In re Jordan*, vol. 8, p. 180.

#### **3. May Remove Liens.**

Congress has power to destroy any lien upon property of the bankrupt, whether created by contract, by statute, or by judgment. The power given it to destroy the principal, the contract *a fortiori*, includes the power to destroy all the incidents or remedies for the enforcement of the contract.—*In re Jordan*, vol. 8, p. 180.

#### **4. Annul Contracts.**

Congress has power to destroy existing contracts, and to release liens held for their enforcement.—*In re Smith*, vol. 8, p. 401.

#### **5. Cannot Vacate Judicial Judgments or Decrees.**

A decree of adjudication having been rendered prior to the approval of the amendatory act of 1874, it stands as the decree of the court.

That it is not in the power of the legislative department of the government to so far interfere with the judicial department as to vacate the judgments and decrees of

the latter.—*In re William J. Pickering*, vol. 10, p. 208.

CONSENT.

See DISCHARGE.

**Dismissal of Proceedings.**

When the petitioning creditor, the bankrupt, and all the creditors who have proved their debts, desire the court to dismiss the proceedings before the choice of an assignee, an order will be made by the court directing that the proceedings be dismissed, and allowing the messenger to deliver up to the bankrupt the property seized upon the payment of costs.—*In re William D. Miller*, vol. 1. p. 410.

CONSIDERATION.

See DEBT.

**1. Slaves.**

A note made prior to the Emancipation Proclamation, of which slaves were a consideration, is valid, and the debt will support a petition of creditor in bankruptcy.—*Miller v. Keys*, vol. 3, p. 225.

**2. Gift.**

A prior gift constitutes no legal consideration for a promissory note, and the claim of the holder to be a creditor may be defeated on that ground.—*Cornwall*, vol. 6, p. 305.

**3. Gift—Moral Consideration.**

A gift is not in itself a sufficient consideration to support a promise of payment, even if expressed in a note, neither is a mere moral consideration sufficient to support a promise to pay. A note given in place of a lost note, if there was no consideration for the making of the original (or lost) note, except a voluntary gift is not a sufficient claim on which to base a petition for bankruptcy proceedings.—*In re Cornwall*, vol. 4, p. 400.

**4. Notes held for Discount.**

A sent certain notes to B, which were indorsed by C, to be discounted and the proceeds placed to his (A's) credit. He drew against them by certain drafts in favor of C, which B failed to pay. C was subsequently adjudged a bankrupt, and B sought to prove his claim against the bankrupt for the notes sent to him by A, but the assignee refused to allow it.

On the petition of B to review the action of the assignee in refusing to allow the claim to be proved, the court held, that inasmuch as the drafts were not paid, B had no right to retain the notes, and, therefore, there was a failure of consideration.—*In re Howard, Cole & Co.*, vol. 6, p. 372.

**5. Settlement on Wife.**

Where, upon an agreement for a separation between husband and wife, the husband makes a settlement upon the wife, and she, through a trustee, consents to relinquish her dower, and to indemnify the husband against her debts, the deed is for a consideration valuable in law, and will be good as against creditors, but if the parties come together and set aside the articles of separation, although stipulating that the settlement shall stand, the consideration of the deed ceases to be valuable, and becomes voluntary, and as against creditors will be void.—*Smith, Assignee, v. Kehr et al.*, vol. 7, p. 97.

**6. Assumption of Partnership Debts.**

Where several notes had been fraudulently given by one partner in the name of the firm for his separate debt, and the partner defrauded, upon learning of the issue of two only of said notes, by an agreement of dissolution of the partnership, purchased from his co-partner his interest in the firm for a certain sum of money, payable by appropriation of portion thereof to the payment of the said two notes, and the balance on or before a certain stipulated time, and the partnership was subsequently adjudged bankrupt, but any claim against the partnership estate, upon any of the notes fraudulently issued, was disallowed, it was

*Held*, That the effect of the said agreement of dissolution, as to the said two notes referred to therein, was not a ratification of the said notes by the defrauded partner as firm obligations, but an assumption of them as his separate debts upon a consideration, which had not failed in whole or in part, the claims upon said two notes remaining also separate debts of the partner who had issued them.—*In re Dunkle & Driesbach*, vol. 7, p. 107.

**7. Time of Passing.**

Although a mortgage was recorded only the day before the petition in bankruptcy

was filed, the evidence showed that the consideration did not pass until the mortgage was recorded.

*Held*, That the transaction was an inchoate one, not consummated until the mortgage was recorded, but still, in point of time, a unit; being marked by good faith, the consideration ought to be regarded as passing when the mortgage was recorded. The court further held that the proceeds of the sale of the property, other than moldings and lumber, must be applied on the amount due on the mortgage.—*In re Raymond S. Perrin and Isaac A. Hance*, vol. 7, p. 283.

### 8. Separation and Reconciliation.

M. and his wife made an agreement of separation, whereby M. agreed to pay S., as trustee for his wife, the sum of seven thousand dollars, in full satisfaction of any claim for maintenance or support, and also for any claim for alimony or dower in case of the death of M. Two thousand dollars was paid in money; the balance, in two notes of two thousand five hundred dollars each, was secured to be paid by deed of trust on M.'s real estate. Shortly thereafter M. and his wife became reconciled, and rescinded the agreement of separation except in the matter of the separate estate.

Four years after this the husband left the country, and soon after was adjudicated a bankrupt. Pending the bankruptcy proceedings the property covered by the deed of trust above-mentioned was sold by order of court, reserving the right of the parties to proceed against the fund. At the time of making the agreement of separation M. was deeply in debt, but it was supposed that he had sufficient property left to pay his debts after giving his wife the seven thousand dollars.

*Held*, That all the elements of value which entered into the composition of the first agreement ceased to exist when the parties became reconciled.

The withdrawal of the consideration left the notes without any element of value in them, and the execution of the new contract, followed by cohabitation, placed the parties exactly where they would have been if there had been no separation, and the notes thus became a voluntary gift to

the wife.—*Smith et al. v. Kehr et al.*, vol. 10, p. 49.

### CONSIGNMENT.

See COMMISSION MERCHANT.

### Allegation of, Equivalent to Removal.

The clause of the 89th Section concerning any pledge, payment, conveyance, etc., of property, does not include consignments which do not change the title. But the allegation that goods were consigned to parties outside of the district in contemplation of bankruptcy, is sufficient as a charge of removal from the district, and if done with a view of becoming bankrupt, and with the intent of keeping such goods from the assignee, is a sufficient charge that it was done to defraud creditors.—*Hammond v. Coolidge*, vol. 3, p. 273.

### CONSPIRACY.

See MISDEMEANOR.

### Indictable.

A conspiracy to obtain goods under color of a purchase upon credit, by one of the conspirators, from such persons as he could induce to part with such goods by his falsely pretending to them that he intended to take the goods to his shop to sell in the ordinary course of trade; and, having so obtained the goods, not to take them to the shop, but to secrete them, and cheat and defraud said persons of them, is indictable as a conspiracy to obtain the goods by a false pretense, within the Gen. Sts., C. 161, Section 54, and St. of 1863, C. 248, Section 2.—*Commonwealth v. Andrew J. Walker et al.*, vol. 4, p. 672.

### CONSTITUTIONALITY.

See AMENDMENT.

### 1. Railroads, though the State a Stockholder, subject to Bankrupt Act.

Congress has power to enact that railroads created by a State shall be liable to the provisions of the United States Bankrupt Act, as it is settled by law that railways are private corporations, and a State, even by becoming a corporator, does not identify itself with the corporation.—*Enoch G. Sweatt, petitioner for revision, v. The Boston, Hartford and Erie Railroad Co. and Seth Adams, petitioning creditor*, vol. 5, p. 234.

## 2. Punishment for Non-payment of Goods within Three Months.

The clause of Section 44, which punishes by imprisonment any fraudulent disposition of the goods of a debtor, obtained on credit and remaining unpaid for, within three months next before the commencement of proceedings in bankruptcy, is constitutional and valid.—*United States v. Pusey*, vol. 6, p. 284.

## 3. Proceedings in rem against Vessels.

The act of April 24, 1862, of New York [Laws of 1862, chap. 482], is unconstitutional and void, so far as it provides for enforcing a maritime contract by proceedings in rem against a vessel.—*Ship Edith*, vol. 6, p. 449.

## 4. Present Bankrupt Law.

The present Bankrupt Law is not unconstitutional for want of uniformity in the exemptions allowed in different States.—*Jordan*, vol. 8, p. 180.

## 5. Subject of Bankruptcies.

The plenary and paramount power of Congress to establish uniform laws on the subject of bankruptcies throughout the United States, is given in express terms by the Constitution of the United States.—*Safe Deposit & Savings Institution*, vol. 7, p. 393.

## 6. Amendment, 1873.

Amendment of March 3d, 1873, to Bankrupt Act, considered and held constitutional in cases where petition is filed after passage of act; and in such cases where in the petition is filed before passage of the amendment to the act, where, after the passage of the amendment to the act, there remains in the hands of the court an unappropriated fund.—*Kean & White et al.*, vol. 8, p. 367.

## 7. Idem.

Amendatory act of March 3d, 1873, held constitutional as to all cases where petition in bankruptcy is filed after the passage of the act.—*In re Jared Everitt*, vol. 9, p. 90.

## 8. Contra.

The amendment of March 3, 1873, construed.

Held, void as declaratory of the act of July, 1872, and not affecting lien of judgments obtained prior to its passage.—*In re Dillard*, vol. 9, p. 8.

## 9. Idem.

The amendment to the Bankrupt Act of March 3d, 1873, is unconstitutional, because it destroys the *uniformity* of the act.—*In re Daniel Deckert*, vol. 10, p. 1.

## 10. Act March 2, 1867.

The provisions of the act of March 2, 1867, entitled "An Act Supplementary to the several Acts of Congress abolishing Imprisonment for Debt," authorizing such proceeding to be had before a United States Commissioner appointed by the President alone, without the consent of the Senate, does not violate the Constitutional provision vesting the Judicial power of the United States in officers appointed by the President *with* the consent of the Senate. (Art. 2, Sec. 2, U. S. Const.)—*In re Russell v. Thomas*, vol. 10, p. 14.

## CONSTRUCTION.

See INJUNCTION.

### PROOF OF DEBT.

#### 1. Fortieth Section of Act—Injunction.

The authority conferred by the 40th Section, to issue an injunction against the bankrupt, and all other persons, has no reference to the State courts, and it is a limitation of the sweeping provisions of the 1st Section.

It was designed to protect the property of a party not yet declared a bankrupt, until his bankruptcy has been legally established.—*Hugh Campbell*, vol. 1, p. 165.

#### 2. "Since," and "Subsequently" to the Passage of the Act.

The difference explained between the meaning of the following phrases in Section 29th, namely "*since* the passage of this act," and "*subsequently* to the passage of this act."—*Rosenfield*, vol. 1, p. 575.

#### 3. Sections 21 and 33, Proof of Debt.

That no consequences can be allowed, under Section 21 of said act, to flow from proving a debt which would be inconsistent with the provisions of Section 30; therefore, so much of said Section 21 as imposes a penalty for proving a debt cannot be construed as applying to a debt which, according to the provisions of Section 33, is not dischargeable.—*Rosenberg*, vol. 2, p. 236.



**4. Ex parte Agreement.**

When persons distinctly named in an instrument of writing as parties of the second part, sign their names as witnesses, it is not for that reason an *ex parte agreement*, but both parties are bound as though they had signed as such.—*Phelps v. Clasen*, vol. 8, p. 87.

**5. Section 39.**

Provisions of Section 39 relate exclusively to proceedings in involuntary bankruptcy.—*In re Thos. C. Evans*, vol. 8, p. 261.

**6. Longest Period.**

The phrase "longest period," during such six months, means the longest period in which business was carried on in any district during such time, and not the greater portion of the six months.—*Foster & Pratt*, vol. 8, p. 237.

**7. Prima facie Evidence of Fraud.**

An act which the bankruptcy statute declares shall be *prima facie* evidence of fraud, must be deemed to be contrary to its provisions, unless the presumption is repelled by opposing proofs.—*Kingsbury et al.*, vol. 8, p. 318.

**8. Residence and Domicile.**

The debtor, being a resident of St. Louis, with his family, bought a stock of goods in Montana in July, 1869; went to Montana in August, 1869, leaving his family in St. Louis; remained in Montana, except a few weeks, when on a business trip to St. Louis, until June, 1870; a petition in bankruptcy was filed against him in the Eastern District of Missouri, July 8th, 1870.

*Held*, That Montana was his place of residence within the meaning of the Bankrupt Act, during the six months preceding the filing of the petition; the word "residence" in Section 11 not being synonymous with the word "domicile."—*In re Watson*, vol. 4, p. 618.

**9. Sections 35 and 39.**

The concluding sentence of Section 39 is to be read and understood with reference to the previous provisions of the act, and should be construed just as it would if the words "subject to the limitations and provisions of the 35th Section" had been added thereto, or inserted therein; as it is the duty of the court to harmonize the sections,

instead of construing the latter as an abrogation of the former.—*Collins, etc., v. Gray & Gray*, vol. 4, p. 631.

**10. Fiduciary Debts.**

In the provision of the Bankrupt Act of 1867, the clause excepting from the effect of a bankrupt's discharge debts created by him while acting in any "fiduciary character," does not include the obligation of a creditor to whom the debtor delivered property with directions to sell it, and apply in satisfaction of the debts so much of the proceeds as might be necessary for the purpose, to pay over to the debtor a balance of the proceeds of the sale remaining after such satisfaction; but it *seems*, implies a fiduciary relation existing previously to, or independently of, the particular transaction from which the excepted debt arises.—*Dennis Cronin v. Amanda C. Cotting*, vol. 4, p. 667.

**11. Forty-first Section—Disproving Allegations.**

The latter clause of the 41st Section of the act, was intended to allow the debtor to disprove all the material allegations of the petition.—*Skelley*, vol. 5, p. 214.

**12. "Business"—"Commercial."**

The word business as applied to corporations has a broader meaning than the word commercial, but it was not the intention of Congress to give such a scope to the word business as to supersede the words *monied* and *commercial*, and leave them without any practical signification.—*Slocatt v. Boston, Hartford & Erie R. R. Co.*, vol. 5, p. 234.

**13. Loss, if any, Payable Pro Rata.**

The proper construction of the words, "loss, if any, payable at the same time and *pro rata* with the insured," occurring in a policy of re-insurance issued by one insurance company to another, is that the first company should pay the amounts the second is *liable* for, not the amounts it actually pays.—*Republic Insurance Co.*, vol. 8, p. 197.

**14. Fourteenth Section of Act—Contingent Debts.**

The 14th Section of the Bankrupt Act in relation to contingent debts and liabilities, construed.—*The United States v. Throckmorton et al.*, vol. 8, p. 309.



**15. Section Forty-one.—Jury Trial.**

That part of Section 41 of the Bankrupt Act, providing that when a trial by jury is demanded in writing, the trial shall be "at the first term of the court at which a jury shall be in attendance," construed and held not to prevent the court from ordering a special jury, where the circumstances of the case require a trial sooner than when a jury would be in attendance in the course of regular terms of the court. In this case, as there was only one regular term in the year, it was ordered that a *venire* be issued for a jury to try the issue of bankruptcy, returnable on the first day of the next week.—*In re Hawkeye Smelting Co.*, vol. 8, p. 385.

**16. National Banks.**

National banks are not within the scope of the Bankrupt Act, though possibly included in the words of the 37th Section, extending the provisions of the Bankrupt Act to all monied corporations. The construction of that section must be limited by the general purpose and object of the act, and so limited will exclude national banks, for the winding up of which, when insolvent, Congress has made especial provisions.—*Smith et al. v. Manufacturers' National Bank*, vol. 9, p. 122.

**17. Remedies.—Penalty.**

The fact that an act of Congress confers a new right, and at the same time provides an adequate remedy for its enforcement, is no ground for considering the remedy thereby conferred to be intended to be exclusive. This inference is only to be drawn when a new penalty is imposed, the rule of construction in the two cases being directly opposite, in the first, liberal, in the last, strict.—*Cook, Waters, Whipple et al.*, vol. 9, p. 155.

**18. Commencement of Proceedings.**

Section 38 of the Bankrupt Act concerning the commencement of proceedings in bankruptcy, construed to mean the filing of a petition sustained by proofs of the act of bankruptcy and of the claim of the petitioning creditor.—*Rogers*, vol. 10, p. 444.

**19. Verba Legis.**

A court cannot substitute in the place of an expressed intention embodied in a statute a presumed intention, but must administer the intention of Congress, as such

intention is made manifest by the words of the statute in the Bankrupt Act itself.—*Nounnan & Co.*, vol. 7, p. 15.

**20. Local Statutes.**

A transfer of property which is void by the terms of the statute of the State where such transfer is made, is also void under the Bankrupt Law, as the United States Supreme Court will follow the construction given to such statute by the highest court in the State.—*Massey et al. v. Allen, Assignee*, vol. 7, p. 401.

**21. Adoption and Re-enactment of Statutes.**

The rule that a Legislature by adopting a statute of another State, or re-enacting an old statute, is presumed to have adopted the judicial construction given thereto, considered and authorities referred to.—*Goodall, Assignee, v. Tuttle*, vol. 7, p. 193.

**22. Choice between Two Constructions.**

As the Bankrupt Law must be uniform to comply with the requirements of the Constitution, therefore, where two constructions are possible, the one which avoids constitutional objections must be preferred.—*Alabama & Chattanooga R. R. Co. v. Jones*, vol. 5, p. 98.

**23. Retrospective Application of the Act.**

There is nothing in the language of the 29th Section of the Act, which indicates an intention to confine the operations of its provisions to transactions occurring *after* the passage of the act.—*In re J. Cretieu*, vol. 5, p. 423.

## CONSULTATION.

See ATTORNEY AND COUNSEL.

**Discretionary with Register to Permit.**

A bankrupt cannot consult with his counsel or with any one while on the witness stand as to the way or manner he shall answer questions put to him, except when the Register, in charge of the case, shall, in the exercise of due discretion, see cause therefor.—*In re Curtis Judson*, vol. 1, p. 364.

## CONTEMPLATION OF BANKRUPTCY.

See ACTS OF BANKRUPTCY,  
PREFERENCES.

**1. As Presumption of Law.**

To render a mortgage void under the 35th Section of the Bankrupt Act, it is not

necessary that the debtor knew or believed himself insolvent. The Section treats of insolvency as a condition of fact, not of belief, and with knowledge of which, and its consequences, he is chargeable in law.

It follows as a logical sequence, that when a man, insolvent in fact, gives a mortgage to one existing creditor, he does so with a view to give him a preference.—*Hall, etc., v. Wager & Fales*, vol. 5, p. 182.

## 2. Distinction between Discharge and Act of Bankruptcy.

Where a person, subject to the Bankrupt Law, being insolvent, and knowing himself to be such, but not contemplating bankruptcy, pays one creditor in full, there is no conclusive presumption that he has given a fraudulent preference within the meaning of Section 29 of the Bankrupt Act, so as to prevent his discharge, although such payment may be an act of bankruptcy within the meaning of Section 30 of the act.

Section 29 refuses a discharge on the ground of preference, only when the act is brought within the definition of Section 35 or of Section 29 itself. Under the latter it must be proved that bankruptcy was in contemplation; and, under the former, that the creditor was a party to the fraud.—*In re Worthington S. Locke*, vol. 2, p. 382.

## 3. Act of 1841 and 1867 Compared.

The act of 1841 declares void preferences made by a party *contemplating* bankruptcy; the act of 1867 includes those made by a party *being insolvent*, and the decisions under the former act are not always applicable to the present statute.

The question whether the debtor knew or did not know of his insolvency is unimportant in determining as to him; and the purpose of the act being to enforce the equal distribution of the estate, every act of an insolvent that tends to defeat that purpose should be construed strictly as against him, and courts should indulge every presumption permissible by the well-settled rules of law, to secure the full benefit of this cardinal principle of the law.—*Hall, etc., v. Wager & Fales*, vol. 5, p. 182.

## 4. Inability to Pay Debts.

Where a party cannot pay his debts in the ordinary course of business, and knows that he cannot, he will be held to have had knowledge of his insolvency.—*Martin, etc., v. Toof et al.*, vol. 4, p. 488.

## 5. Denial of Bankrupt.

Where it appeared solely from the testimony of bankrupt that he had made a general assignment for the benefit of creditors, and filed an application in bankruptcy on the fourth the succeeding day,

*Held*, That a bare denial of the bankrupt is insufficient to show that such transfer was not made in contemplation of bankruptcy.—*In re Brodhead*, vol. 2, p. 278.

## 6. Committing an Act of.

Contemplating committing an act of bankruptcy is contemplating becoming bankrupt.—*Goldschmidt*, vol. 3, p. 164.

## CONTEMPT.

See ASSIGNEE,  
BANKRUPT,  
EXAMINATION.

## 1. Refusal Bankrupt to Answer Question.

If the creditor chooses, he can, upon said refusal, apply to the district judge to punish the party as for contempt of court, and upon said application the said judge will decide whether or not the question is a proper one.—*In re Isaac Rosenfield, Jr.*, vol. 1, p. 819.

## 2. Dismissal of Appeal—Pending Injunction.

Debtor filed his petition in bankruptcy, and obtained an order from the Bankruptcy court that the creditors show cause why they should not be restrained from enforcing their claim, with a stay of proceedings in the meantime. Before the order to show cause was returnable the appeal in the State court was called in its order and dismissed by the plaintiff's attorney, he having had notice of the stay granted by the Bankruptcy court, and a motion was thereupon made for an attachment against the judgment-creditor and his attorney for disobedience of the stay.

*Held*, That no action of the plaintiff in regard to an appeal in this case would tend to enforce any demand against the bank-

rupt, nor deprive the assignee in bankruptcy of any property or right, and, therefore, the dismissal of the appeal could not be a violation of the order of this court forbidding proceedings to enforce the plaintiff's claim.—*Hirsch*, vol. 2, p. 8.

**3. Witnesses Failing to Answer Interrogatories.**

On an application for attachment of witnesses for contempt in not making answers on examination under a commission,

*Held*, That attachment must be refused, for the reason that no written interrogatories accompanied the commission, and no information furnished as to the particular inquiry.—*In re Samuel Glaser*, vol. 2, p. 398.

**4. Separate Proceedings to Punish for.**

No judgment can be rendered against a third person for contempt in disobeying an injunction issued in aid of the writ of bankruptcy, without proper proceedings taken against him distinct from those against the bankrupt.—*Creditors v. Corzens & Hall and McCreery*, vol. 3, p. 281.

**5. Failure to Pay over Money Returned in Schedule.**

The Bankruptcy court will adjudge a bankrupt guilty of contempt of court who fails to pay over to his assignee money returned "cash on hand," in his schedule of assets, or to the marshal as messenger in involuntary cases.—*In re Dresser*, vol. 3, p. 557.

**6. When Service of Injunction Evaded.**

On a petition by an assignee in bankruptcy to have a mortgagee adjudged guilty of contempt for violating an order of a United States District Court, enjoining him from foreclosing a mortgage or from prosecuting an action thereon, or from taking possession of mortgaged property when the mortgagee knew of the making of such order, but under advice of counsel evaded service thereon, the mortgagee will be adjudged guilty of contempt, and the amount of fine will be held open until the actual loss and cost to the assignee is ascertained.—*Feeny*, vol. 4, p. 233.

**7. Provisional Injunction Terminates with Adjudication.**

A party cannot be punished for violating an injunction granted under Section 40,

where the violation takes place after the adjudication.—*In re S. J. Moses*, vol. 6, p. 181.

**8. Failure to Turn over Money in Bankrupt's Hands.**

A Register may order bankrupts to hand over to his custodian funds in their hands. Disobedience to such an order adjudged a contempt, for which an attachment was issued from the court.—*In re F. & A. Speyer*, vol. 6, p. 255.

**9. Bankrupt Failing to Obey Summary Orders after Adjudication.**

After a discharge has been granted, the power of means to discover assets by the examination of the bankrupt, under Section 26, no longer remains, and that the power of examination will not be revived until the discharge has been set aside. Proceeding for contempt discharged.—*In re G. C. Jones*, vol. 6, p. 386.

**10. Interference with Bankrupt's Property after Adjudication.**

*Held*, That the Bankruptcy court has the unquestioned power of punishing for contempt those who interfere with property of a bankrupt in its custody, and, hence, must have the subsidiary power of restraining persons by an injunction from interfering with such property, and then punishing them for contempt if they violate such injunction.

Parties may be punished for contempt, if there has been no injunction, for interfering with the admitted property of the bankrupts, by selling it after adjudication, and there can be no well-founded objection to the power of the court to give them warning by injunction in advance, so that they may refrain from committing such contempt.—*In re I. Ulrich et al.*, vol. 8, p. 15.

**11. Idem.**

A lease to S. terminated by condition broken, after S. filed his petition in bankruptcy and before the appointment of an assignee. The lessor, by summary proceedings in the State courts, evicted S., and took possession of the premises leased. On petition of S.'s assignee in bankruptcy, to require the lessor to restore possession, or show cause why he should not be attached for contempt,

*Held*, The possession of the bankrupt after petition filed, is the possession of the Bankrupt court, and any interference therewith, except by leave of that court, is in contempt of its authority.

*Ordered*, That lessor restore possession of the property leased within 20 days, or, in default, attachments for contempt issue. *In re Steadman*, vol. 8, p. 819.

## 12. Foreclosure after Filing of Petition.

Where a mortgagee proceeded in the State court, after petition in bankruptcy was filed by the mortgagor, with knowledge thereof, to foreclose his mortgage, without first obtaining the permission of the Bankrupt court,

*Held*, He was in contempt, and the sale itself a nullity; by the filing of the petition all the property of the bankrupt is *eo instanti* placed in the custody of the Bankrupt court.—*Phelps, Assignee, v. Sellick*, vol. 8, p. 390.

## 13. Advising the Filing a Petition in Bankruptcy.

A creditor of a bank having applied to have a banking association dissolved and a receiver appointed, the court granted an injunction restraining the bank disposing of its assets, and appointing a receiver.

The attorneys of the bank advised it to apply for the benefit of the Bankrupt Act.

The judge of the State court adjudged the attorneys guilty of contempt, and disbarred them until such time as they procured the dismissal of the proceedings in bankruptcy and the return of the fund to the jurisdiction of the State court.—*Watson v. Citizens' Savings Bank*, vol. 9, p. 458.

## 14. Applying in State Court for Receiver of Property in Custody of Bankrupt Court.

C., on notice, sought a receiver of the property belonging to his debtor, the bankrupt.

An injunction was issued out of the United States District Court, restraining C. and his attorneys from further proceeding with his application for the appointment of a receiver.

C. was not served with the injunction until he was upon his feet before the justice of the Supreme Court, engaged in making the application for a receiver; that

when informed of the existence of the injunction, he stated this fact to the justice, and took no further action except to hand up to the justice his motion papers, with a draft order for the appointment of the receiver wished for.

*Held*, That C. deliberately disregarded the order of this court, and was guilty of contempt.

Reference ordered to the Register in charge of the case to take testimony as to the amount of expense and loss occasioned by the violation of the injunction.—*In re South Side Railroad Company*, vol. 10, p. 274.

## CONTINGENT LIABILITY.

See DEBTS,  
DISCHARGE,  
PROOF OF DEBT.

### 1. Not Included on Question of Discharge.

Contingent debts and liabilities, specified in Section 19, cannot be regarded as liabilities of a principal debtor within the 33d Section, until they have become fixed liabilities, other than in contradistinction to contingent.—*In re Loder*, vol. 4, p. 190.

### 2. Indorser.

The liability of an indorser, although fixed, is a secondary liability, and not a principal one.—*Loder*, vol. 4, p. 190.

### 3. Sureties.

Suit was brought against defendants as sureties on the bond of a deceased collector of internal revenue. One of the defendants pleaded his discharge in bankruptcy in bar of the action, and the court held, that, although this defendant was a surety to the Government, he was discharged under the Bankrupt Act, and that the plea was good, this case not coming within the exceptions named in the act.

The 14th Section of the Bankrupt Act in relation to contingent debts and liabilities construed.—*The United States v. Throckmorton et al.*, vol. 8, p. 308.

### 4. When the Uncertainty Cannot be Calculated, the Debt is not Provable.

The 5th Section of the Bankrupt Act of 1841 enacts that "All creditors, whose debts

are not due and payable until a future day, all annuitants, holders of bottomry and respondentia bonds, holders of policies of insurance, sureties, indorsers, bail, or other persons having *uncertain or contingent demands* against such bankrupt, shall be permitted to come in and prove such debts and claims under the act, and shall have a right, when those debts or claims become absolute, to have the same allowed them; and such annuitants and holders of debts payable in future may have the present value thereof ascertained under the direction of such court, and allow them accordingly, as debts *in presenti*."

Under this Section, so long as it remains wholly uncertain whether a contract or engagement will ever give rise to an actual duty or liability, and there is no means of removing the uncertainty by calculation, such contract or engagement is not provable under the act.

A claim for a breach of covenant that the grantor has an indefeasible estate in fee in land sold—the claim arising from the right of his wife, yet living, to be endowed of the estate—is of this character during the life of the husband.—*Riggin v. Magwire*, vol. 8, p. 484.

#### 5. When Debtor is Discharged—Acts of 1841 and 1867—Surety of Guardian.

Where a contract of the bankrupt exists at the time of commencement of proceedings in bankruptcy, but the question of his liability thereon is, though contingent, then capable of determination and the ascertainment of the amount due, the debtor will be discharged therefrom, under the Bankrupt Act of 1867.

The Acts of 1841 and 1867, in this respect, compared.

The surety of a guardian is discharged in bankruptcy from the defaults of his principal occurring prior to the commencement of proceedings in bankruptcy against the surety, though the fact of such default was undetermined until after the surety received his discharge, and although the right of action against the surety did not accrue until the decree determining the default of the guardian was rendered.—*Jones & Cullom v. Knox*, vol. 8, p. 559.

#### CONTRACT.

See ASSIGNEE,  
DISCHARGE,  
INFLUENCING PROCEEDINGS,  
PENALTY,  
USURY.

#### 1. Apportionment of Compensation under.

When the bankrupt under a general contract has rendered partial service, but has not completed the contract prior to the filing of the petition, but subsequently fulfills the same, unless the contract for payment was contingent upon full performance of the services, the compensation will be apportioned between the assignee and the bankrupt, in proportion to the value of the services rendered before and after the bankruptcy.—*In re Jones*, vol. 4, p. 847.

#### 2. Rescission of, on Account of Bankruptcy.

A contracted with B for the sale of certain scales, payment to be made by B's note on their delivery and after they were set up. They were delivered but not set up according to contract, and B's note was not given. Soon after this B was declared bankrupt. A petitioned to have his goods returned, which was granted, and an order entered accordingly.—*In re A. Pusey*, vol. 6, p. 40.

#### 3. Conditional Title.

A contract for the conditional delivery of goods to a debtor gives his creditors no title to them until the account for the same is paid.—*Sawyer et al. v. Turpin et al.*, vol. 5, p. 339.

#### 4. Usury, Penalty, Void Contract.

Where a statute contains both a *prohibition* and a *penalty*, a contract or transaction contrary thereto, is absolutely illegal and void, unless it appears upon a consideration of the whole act, that the legislature did not so intend.

Where an act to regulate the rate of interest on money contains an unqualified prohibition against taking or receiving a greater interest than therein prescribed, and in a certain contingency also provides for the forfeiture of the *entire* usurious



debt, the reasonable inference is that the legislature intended to make all acts and contracts in contravention thereof absolutely illegal and void.—*Pittock*, vol. 8, p. 78.

#### 5. Title—Assignee may Complete.

A written contract provided that the ownership of personal property was not to pass until the stipulated price had been paid.

*Held*, That under the contract the ownership would remain in the vendor although the vendee had possession, and all but a small portion of the money due had been paid; that if the assignee in bankruptcy shall deem it for the interest of the creditors, he may pay the balance due to the vendor and hold the property for the benefit of the estate.—*In re J. H. Lyon*, vol. 7, p. 182.

#### 6. Married Woman.

In Indiana a married woman, unless possessed of separate estate, is incapable of making a contract.—*In re Rachel Goodman*, vol. 8, p. 380.

#### 7. Agency.

A party dealing with an agent may resort to the principal to compel performance of the agreement of the agent, unless the contract was made exclusively on the credit of the agent.—*Troy Woolen Company*, vol. 8, p. 412.

#### 8. Usury, Equitable Relief in.

A contract to do an act forbidden by law is void, and cannot be enforced in a court of justice; but it does not, therefore, follow in cases of usury, if the contract be executed, that a court of chancery, on application of the debtor, will assist him to recover back both principal and interest; and they will give no relief to the borrower if the contract be executory, except on condition that he pay to the lender the money loaned with interest; nor if the contract be executed will they enable him to recover any more than the excess he has paid over the legal interest.—*Tiffany v. The Boatman's Savings Institution*, vol. 9, p. 245.

#### 9. Impairing Obligation.

Congress, by virtue of the power given it to pass a bankrupt law, has authority

not only to *impair but to destroy the obligation* of contracts.—*Jordan*, vol. 8, p. 180.

#### 10. Idem.

Congress has power to destroy existing contracts and to release liens held for their enforcement.—*In re John W. Smith*, vol. 8, p. 401.

#### 11. Payment in Fraud of Act not Refunded.

Where the general assignee of the bankrupt made certain conveyances of the real estate, the administrators of the grantee made application to have the amount paid on the contract of sale refunded, which was denied for the reason that there was a failure to show that the transaction with decedent was made in good faith by the general assignee.—*In re Jacob H. Mott & Jordan Mott*, vol. 1, p. 223.

### CONTRIBUTION.

See COST AND FEE.

#### Expenses in Bankruptcy.

A creditor's petition for an adjudication of bankruptcy against the estate of his debtor, is the same as a creditor's bill against a deceased insolvent. All creditors must contribute *pro rata* to the expenses of the suit.—*Williams*, vol. 2, p. 83.

### CONVEYANCE.

See CHATTEL MORTGAGE,  
FRAUD,  
REASONABLE CAUSE,  
RECORDING,  
TRUSTEE.

#### 1. Definition of.

The word conveyance in the Bankrupt Act is a generic term, including all proceedings to dispose of or encumber property in derogation of the equality of creditors, with intent by such disposition either to defeat or delay the operation of the act; hence it includes mortgages on real estate.—*Bingham v. Frost and v. Williams*, vol. 6, p. 130.

#### 2. To Lien Creditor.

A conveyance by an insolvent debtor to his creditor of property upon which said creditor has a lien to a greater amount than the value thereof, is not void as being within the pervue of the first clause of



Section 35 of the Bankrupt Act.—*Catlin v. Hoffman*, vol. 9, p. 342.

### 3. As Security for Continuing Debt.

A mortgage or other conveyance made as security for a debt evinced by a note or bond, will be upheld as a security for the same continuing debt, though the evidence of it may be changed by renewal or otherwise, but where the security is changed the same will not be.—*Wynne*, vol. 4, p. 23.

### 4. In Fraud of Bankrupt Act.

From the provisions of the 35th Section of the act, it is manifest that Congress intended that the various conveyances therein specified shall be valid unless proceedings in bankruptcy are instituted within six months.—*Maltrie v. Hotchkiss*, vol. 5, p. 485.

### 5. In Fraud of Creditors.

Land conveyed in fraud of creditors passes to the assignee in bankruptcy of the grantor by virtue of Section 14 of the act, though conveyed more than six months before the bankruptcy, and is not within Section 35.—*Pratt, Jr., v. Curtis et al.*, vol. 6, p. 139.

### 6. Participation of Grantee in Fraud.

It is not necessary, where a voluntary conveyance is sought to be set aside as fraudulent against creditors, to prove that the grantee knew of or participated in the fraudulent intent of the grantor. It is sufficient to show the conveyance was made with a fraudulent intent on the part of the grantor, and was voluntary.—*John S. Beecher, as Assignee, v. Isabella Clark et al.*, vol. 10, p. 385.

### 7. Absence of Intent to Defraud, Necessary.

It is not sufficient to uphold a voluntary conveyance when attacked by creditors, to show that the donor, at the time of making it, retained sufficient property to pay his debts. It must also be shown that it was made without intent to defraud his creditors.—*Beecher v. Clark et al.*, vol. 10, p. 385.

### 8. By a Co-partner.

A conveyance, by a partner, of his individual property, although an act of bankruptcy as against him, will not sustain a proceeding of bankruptcy as against the firm, even though the conveyance was

made with intent to hinder, delay, or defraud firm creditors, or with a view to give a preference to a firm creditor, for, in such case, the proceeding must be against that partner alone.—*Redmond & Martin*, vol. 9, p. 408.

### 9. Void under a Statute of Fraud are Void against Assignee.

Mortgages and bills of sale of personal property, which are void as to creditors under the Statute of Frauds of the State where the transactions occur, are void and convey no title as against the assignee in bankruptcy.—*Edmondson v. Hyde*, vol. 7, p. 1.

### 10. General Conveyance by Solvent Debtor.

Where a debtor whose property exceeds in value all that he owes, for the purpose of paying all his debts and of securing to himself a maintenance in the future, conveys all his property to another upon an agreement that the latter should pay all such debts and support the grantor for the residue of his life, such conveyance is not *per se* fraudulent or void as against creditors, nor an act of bankruptcy.—*In re Cornwall*, vol. 6, p. 305.

### 11. Effect of Avoidance.

In Massachusetts a voluntary conveyance to a wife or child of the grantor by a person much indebted, is *prima facie* fraudulent as to existing creditors. If such a deed is set aside by existing creditors, it seems that the land or its proceeds are assets for creditors generally. If it should be assets only for a certain class of creditors, yet the assignee is the proper plaintiff to impeach the deed.—*Pratt v. Curtis*, vol. 6, p. 139.

## CORPORATION.

See ASSETS,  
BANKRUPT,  
CONCEALMENT,  
DISCHARGE,  
DEBT,  
PROOF OF DEBT,  
RAILROAD CORPORATIONS,  
RAILWAY,  
SERVICE OF PAPERS,  
STAY OF PROCEEDINGS.

## CORPORATION—

- I. *What Corporations Amenable to Bankrupt Act*, p. 306.
- II. *Acts of Bankruptcy*, p. 306.
- III. *Adjudication of*, p. 307.
- IV. *By-Laws*, p. 308.
- V. *Deed*, p. 308.
- VI. *Insolvency*, p. 308.
- VII. *Judgment*, p. 308.
- VIII. *Jurisdiction*, p. 309.
- IX. *Ordinary Course of Business*, p. 309.
- X. *Organization*, p. 309.
- XI. *Quasi Corporations*, p. 309.
- XII. *Railroads*, p. 309.
- XIII. *Receiver*, p. 310.
- XIV. *Service on*, p. 310.
- XV. *Sale*, p. 310.
- XVI. *Stock*, p. 310.
- XVII. *Stockholder*, p. 311.
- XVIII. *Subscriptions to Stock*, p. 311.
- XIX. *Suspension*, p. 312.
- XX. *Ultra Vires*, p. 312.

# 1. *What Corporations Amenable to Bankrupt Act.*

## 1. *Railway.*

Objection to the adjudication of a railroad company, because it is not a monied business, or commercial corporation, or a joint stock company, is not well taken. For it seems to be the clear intent of the 37th Section to bring within the scope of the Bankrupt Act all corporations, except those organized for religious, charitable, literary, educational, municipal, or political purposes.—*Jones*, vol. 5, p. 97.

## 2. *Idem.*

Railways fall within the designation of business or commercial corporations, and are clearly within the operation of the Bankrupt Act.—*Winter v. The Iowa, Minnesota & North Pacific Railway Co.*, vol. 7, p. 289.

## 3. *Business.*

A corporation created for the purpose of carrying on any lawful business, defined by its charter, and clothed with power to do so, is such a corporation as is contemplated by the Bankrupt Act.—*The Florida, Atlantic & Gulf Central Railroad Co.*, vol. 1, p. 647.

# 4. *May be Adjudicated after Dissolution in State Court.*

A corporation that has been dissolved by a decree of a State court, and a receiver appointed, still exists for the purpose of being proceeded against in bankruptcy; hence, an adjudication is valid if the corporation by answer admits the acts of bankruptcy alleged against it, although the receiver may not have been a party to the answer or given his assent to such adjudication. No power exists to wrest from the jurisdiction of the courts in bankruptcy the assets of such bankrupt individuals and corporations as are within the scope of the provisions of the United States Bankrupt Act.—*In re Independent Insurance Co.*, vol. 6, p. 260.

## 5. *Idem.*

A bank, incorporated under the laws of the State of Louisiana, became insolvent, and the Attorney-General of the State, in 1868, proceeded in a State court at the instance and by request of the bank, and thereupon a decree was rendered forfeiting its charter, and directing its affairs to be wound up in accordance with the insolvent laws of the State. In 1869, creditors of the bank petitioned to have its assets surrendered and administered upon in bankruptcy, and were opposed by the State Insolvent Commissioners.

*Held*, The State court had no jurisdiction in the premises except to the extent of decreeing a forfeiture of the bank charter, when its jurisdiction ended.—*Thornhill & Williams et al. v. Bank of Louisiana*, vol. 3, p. 435.

## II. *Acts of Bankruptcy.*

# 6. *Fraudulent Transfer by, is an Act of Bankruptcy.*

A railway corporation commits an act of bankruptcy by fraudulent transfer within the period prescribed in the act.—*Minnesota R. R. Co.*, vol. 10, p. 86.

# 7. *Railroad Corporation Suspending Commercial Paper.*

When the bankruptcy proceedings are based on the ninth clause of the 39th Section of the Bankrupt Act of 1867, as amended, it is necessary to aver and prove that the debtor was either a banker, broker, mer-

chant, manufacturer, miner or trader, and as the character of the Alabama & Chattanooga Railroad Company does not authorize it to carry on either of these pursuits, it does not come within the provisions of the ninth Clause of Section 39 as amended. As the petition upon which the adjudication of this railroad company was made did not allege that it was either a banker, broker, merchant, manufacturer, miner, or trader, and as no proof thereof was offered to this effect, the irresistible conclusion is, that upon that petition and the proofs presented to the court, this railroad company should not have been adjudicated a bankrupt.—*Jones*, vol. 5, p. 97.

### 8. Trust Deed by Railway Corporation.

It is not an act of bankruptcy for a railroad corporation to convey its property in trust to secure bonds to be issued and sold, and the proceeds to be applied to pay all its unsecured debts; the same being done *bona fide* with a view to enable the company to continue its legitimate business, though it may be technically insolvent, or likely soon to be so.—*Union Pacific R. Co.*, vol. 10, p. 178.

### 9. Mortgage.

One who is insolvent and undertakes to make a final distribution of his assets must do it through the Bankrupt court. A trust to sell all a debtor's property and divide the cash ratably among his creditors, is an act of bankruptcy, but a mortgage by a railroad company to secure all its creditors equally out of its earnings, or to pay such as refuse the security, their ratable proportion of the proceeds, is not an act of bankruptcy.—*In re The Union Pacific Railroad Company*, vol. 10, p. 178.

## III. Adjudication of.

### 10. Vacating Improper Adjudication.

Where an order was made by the District Court, vacating the adjudication of a corporation as bankrupt, because the proceedings in which the petition was filed were informal and unauthorized; on an application made to the Circuit Court to reverse such order,

*Held*, That the order vacating the adjudication was correct. Where the petition in bankruptcy was filed without proper authority, the Register acquired no jurisdic-

tion. Under the provisions of the 87th Section the filing of the petition must be "duly authorized by a vote of the majority of the corporators, at any legal meeting called for the purpose." No other petition can be recognized under the act.

A corporator is one of the constituents or stockholders.—*In re "The Lady Bryan Mining Co."*, vol. 4, p. 144.

### 11. Secretary cannot be authorized to File Petition.

Where the Board of Trustees of a company authorized their secretary to file petition for the purpose of having the corporation adjudicated bankrupt,

*Held*, That such filing was illegal, the trustees having no power to authorize their secretary to do so. When a corporation seeks to avail itself of the provisions of the Bankrupt Act, it must do so in the manner prescribed by the act. Adjudication vacated.—*In re "The Lady Bryan Mining Co."*, vol. 4, p. 144.

### 12. To File a Petition in Bankruptcy a Meeting must be called for the purpose.

Although the management of a corporation may be committed to a Board of Trustees, by the laws of a State, that of itself does not authorize them to file a bankruptcy petition, under an act of Congress, whereby others have been clothed with the requisite power.

The action of a board is not the action of the corporation. The corporation must act at a meeting "called for the purpose."

Subsequent ratification, by stockholders, does not cure the defect of a want of jurisdiction in the Register, at the commencement of the proceedings.—*In re "Lady Bryan Mining Co."*, vol. 4, p. 394.

### 13. Exclusive Jurisdiction over proceedings—Corporation being in different States.

Upon a petition in bankruptcy against the Boston, Hartford and Erie Railroad Company, it appears that the company owned a railroad situated partly in Connecticut and partly in Massachusetts.

*Held*, Whether this company were one corporation or two corporations chartered by different States, but united, and having in all respects a common interest, or an anomalous body, not precisely answering either

of their descriptions—upon the filing of the creditor's petition in the District Court of the district where the principal office and place of business of the road was situated, that court acquired exclusive jurisdiction over proceedings in bankruptcy against it, which could not be affected by a petition subsequently filed by another creditor in another district.—*In re Boston, Hartford and Erie R. R. Co.*, vol. 6, p. 209.

#### 14. May be Adjudicated Bankrupt after Dissolution by State Court.

A corporation dissolved by a decree of a State court before adjudication, but after the service of an order to show cause, still exists for the purpose of being proceeded against in bankruptcy, as such dissolution does not deprive the District court of its jurisdiction or abate the proceedings.—*Platt, Assignee, v. Archer*, vol. 6, p. 465.

#### 15. May Admit by Attorney, Commission, Act of Bankruptcy.

It is not necessary for a corporation to authorize their attorney, by a vote of the corporators or shareholders, to appear for them and admit the acts of bankruptcy charged in a petition filed against it.—*Leiter v. Payson*, vol. 9, p. 205. ●

### IV. By-Laws.

#### 16. Liens Created by, Protected.

Where the by-laws of a bank make the stock of its stockholders subject to all indebtedness to the bank, the bank has a right to enforce this by-law, in case of bankruptcy of the stockholder.—*In re Thomas Morrison*, vol. 10, p. 105.

#### 17. Waiver of.

A provision in the by-laws of a corporation requiring transfer to be made upon the books may be waived by the company, and if waived at the request of purchaser of stock, or with his assent, he becomes directly liable for future assessments.—*Upton, Assignee, v. Burnham*, vol. 8, p. 221.

### V. Deed.

#### 18. Execution of.

A corporation cannot execute a deed otherwise than under its seal.

A corporation cannot make a deed unless the directors, or a majority of them, meet together as a board, and so determine; and the only evidence of such meeting and ac-

tion is the "record" required to be kept by the secretary.—*In re The St. Helen's Mill Co.*, vol. 10, p. 414.

### VI. Insolvency.

#### 19. Insolvent Unable to Pay Debts as they Mature.

A corporation that is unable to pay its debts as they become due, in the ordinary course of its daily transactions, is insolvent, and a creditor may be said to have reasonable cause to believe in the existence of such insolvency when such a state of facts is brought to his notice, respecting the affairs and pecuniary condition of his debtor, as would lead a prudent business man to the conclusion that the debtor was unable to meet his obligations as they matured in the ordinary course of business.—*Buchanan et al., v. Smith, assignee*, vol. 7, p. 513.

### VII. Judgment.

#### 20. Stay of, when Stockholders Liable.

The effect of granting a stay upon a judgment against a corporation before execution returned, or setting aside an execution issued thereon, the stockholders of which are personally responsible, will be to discharge "a person, or officer, or member thereof," where such liability must be predicated of such judgment, and execution returned unsatisfied. Hence, a motion on the part of the defendants to stay proceedings after judgment must be denied.—*Sarah O. Allen, Administratrix, etc., v. The Soldier's Business Messenger and Dispatch Company*, vol. 4, p. 537

#### 21. Idem.

The provision of the 21st Section of the Bankrupt Act for staying any suit or proceeding to await the determination of the court in bankruptcy on the question of discharge, does not apply to a corporation, which can never receive such discharge by the terms of the said act.—*Meyer v. Aurora Ins. Co.*, vol. 7, p. 191.

#### 22. May be Rendered after Adjudication.

The bankruptcy of a corporation does not prevent judgment being obtained against the corporation, and the creditor in default of obtaining satisfaction under the judgment, from the property of the corporation, pursuing the remedy given to him by

statute, against stockholders.—*Sarah O. Allen v. William Ward, a Stockholder*, vol. 10, p. 285.

### 23. Proving Debt not a Bar to Recovery.

Proving a debt and recovering dividends in bankruptcy against a corporation, is no bar to recovering judgment for the balance in a State court.—*The American Brass and Copper Co., Respondent, v. The New Lamp Chimney, Appellant*, vol. 10, p. 355.

## VIII. Jurisdiction.

### 24. After Dissolution.

The fact that the bank was extinct, as a corporation, and its assets being administered upon under decree of the State court, and according to State laws, at the time of creditors filing said petition in bankruptcy, does not affect the jurisdiction of the United States Bankruptcy Court, and it will lay hold of the assets of the bank, in whosoever hands they may be, and distribute the same in accordance with the provisions of the Bankruptcy Act.—*Thornhill v. Bank Louisiana*, vol. 5, p. 367.

## IX. Ordinary Course of Business.

### 25. Sale of Mortgages.

It is not "out of the usual and ordinary course of business," for a corporation engaged in manufacture, and which owns mortgages yet to become due, and desires to realize money thereon for use in its regular business, to sell such mortgages for their cash value. Hence a transfer made under such a state of circumstances will be adjudged valid as against the assignee in bankruptcy.—*Judson, Assignee, v. Kelty et al.*, vol. 6, p. 165.

## X. Organization.

### 26. Stockholder cannot Plead Defect in, on Suit for Subscription.

The assignee filed a petition in the United States District Court, for an order against all the stockholders to pay in the amount unpaid on the stock held by them respectively, which order was duly granted, and default having been made, the assignee brought suit against the different stockholders for the amount remaining unpaid by each of them.

A motion for a new trial was filed by de-

fendants against whom verdicts were rendered.

*Held*, That where papers, having color of compliance with the statutes, have been filed with the proper State officers, and meet their approval, but are in fact so defective as to be incapable of supporting the corporation, as against the State, they are, as against a subscriber to its capital stock, held sufficient to constitute a corporation *de facto* if supported by proof of user. — *Upton v. Hasbrough*, vol. 10, p. 368.

## XI. Quasi Corporations.

### 27. Individual Liability.

Where certain persons associated themselves together, assuming to be a corporation and using a corporate name, without authority of law, they are individually liable as copartners for the debts of the association; and a creditor who has dealt with them as a corporation, is not thereby estopped from setting up his claim against them individually.—*Mendenhall*, vol. 9, p. 497.

## XII. Railroads.

### 28. Carrying on Business.

"Carrying on business," within the meaning of the 11th Section of the Bankrupt Act, as applied to a railroad corporation, does not mean the conduct of such transactions as are merely collateral or incidental to the purpose for which the corporation is created, whether they are conducted by agents or officers, and although an officer is continually kept for the purpose.—*In re Alabama & Chattanooga R. R. Co.*, vol. 6, p. 107.

### 29. Idem. In Several Different States.

Where a corporation holding property and carrying on business in three several States, is adjudicated bankrupt and assignees are appointed who are respectively citizens of two States in which proceedings in bankruptcy are also pending, but none is appointed in the third State in which proceedings in bankruptcy are also pending,

*Held*, That as three assignees were to be chosen and proceedings were pending in three different districts, it ought to have been so arranged that each of the districts could have an assignee within it, resident thereof. The court in the district in which no assignee has been selected, therefore,



declines to approve of the election of the assignee.—*In re Boston, Hartford & Erie R. R. Co.*, vol. 5, p. 283.

### 30. May be Adjudged Bankrupt.

A railway corporation may be adjudged bankrupt.—*In re Southern Minnesota R. R. Co.*, vol. 10, p. 86.

## XIII. Receiver.

### 31. May Prove Claims.

A receiver of a corporation, duly appointed on its dissolution by the law of the place where the corporation was created, will be recognized as a proper representative of such corporation in bankruptcy, and as such allowed to prove all claims due to the corporation he represents.—*In re Republic Insurance Co.*, vol. 8, p. 197.

### 32. Priority of Appointment.

On review of a motion in the United States court to appoint a receiver to take possession of the property of a corporation already ordered to be delivered to a receiver appointed by a State court,

*Held*, That the jurisdiction of the two courts was concurrent, that the jurisdiction of the State court was first invoked and asserted, consequently no court of concurrent jurisdiction can, or ought, to interfere with it.

Motion continued to allow the defendants to set up the facts in regard to the proceedings of the Chancery Court of Sumter County by formal answer.—*Blake v. The Alabama & Chattanooga R. R. Co. et al.*, vol. 6, p. 331.

## XIV. Service on.

### 33. After Dissolution, on Cashier.

A cashier is still an officer of the bank for the purpose of being served with an order to show cause, although he has given the keys to the receiver appointed by a State court, and has become his clerk, and ceases to act as cashier.—*Platt v. Archer*, vol. 6, p. 465.

### 34. Idem, by Publication.

A corporation organized under the laws of the State of New York, became insolvent, and the Attorney-General of the State instituted proceedings restraining the company and its officers from exercising any of its corporate powers, and an order

was made by the Supreme Court of the State, appointing a receiver, who took possession of the property of the company. Subsequently a petition in bankruptcy was filed.

*Held*, That this was a case where the debtor could not be found on account of the dissolution, and service of the order to show cause must be made by publication.—*In re Washington Marine Ins. Co.*, vol. 2, p. 648.

## XV. Sale.

### 35. Free of Liens.

When the interests of all parties seem to demand it, the court is authorized to direct the assignee to sell the real estate of a bankrupt corporation free from all liens, except the existing and recorded mortgages.—*In re National Iron Company*, vol. 8, p. 422.

## XVI. Stock.

### 36. Unpaid Subscriptions.

Unpaid subscriptions to the capital stock of a corporation are assets applicable to the payment of corporate debts which the corporate authorities may call in for corporate purposes.

An assignee of stock may have paid for it to the assignor and relied on his representations, and those of the officers of the company, that the shares so bought were fully paid for; yet creditors are not bound thereby, and if the stock was not fully paid, the holder is liable to creditors of the company for the amount remaining unpaid. *Myers v. Seely et al.*, vol. 10, p. 411.

### 37. Assessment on.

The assignee filed a petition to require the stockholders to pay up their unpaid subscription to stock in a company, defectively organized.

*Held*, The unpaid subscription is a part of the capital of the company and the stockholders cannot set up the defective organization as a defense.—*Upton, etc., v. Hansbrough*, vol. 10, p. 370.

### 38. Idem.

Where the charter provided, the "subscribers to the stock of this company shall pay for said stock in manner following: five per cent. down, five per cent. in three months, five per cent. in six months, five per cent. in nine months, the balance being



subject to the call of the directors, as they may be instructed by majority of the stockholders represented at any regular meeting." In such case, to maintain an action at law for such balance, there must be a call or assessment, or something standing in the place thereof, or equivalent thereto, either by the company or a proper court, to make the stockholder liable.—*George Chadler, Receiver, et al. v. A. Siddle, a Stockholder*, vol. 10, p. 236.

#### XVII. Stockholder.

##### 39. Dismissal of Proceedings against Corporation.

Where the stockholder of a bankrupt railroad company purchase in good faith all the outstanding floating indebtedness of the company, except a few minor claims, and all the creditors, except those representing these few claims, desire such a result, they should be allowed to have the bankruptcy proceedings dismissed on giving proper security for the payment of the objecting creditors. It being evidently for the best interests of all parties and the desire of a large majority that the corporation be managed in the customary manner, the Bankrupt court will not retain the custody and control of its property to assist minor creditors in coercing their claims.—*In re Indianapolis, Cincinnati, and Lafayette R. R. Co.*, vol. 8, p. 302.

##### 40. Liability for Representations.

A stockholder is bound by the representations of the corporation of which he is a member as to acts done by him that he has the opportunity of knowing and has not contradicted, in so far as such representations may have been acted on by third persons.

The relations of a stockholder to the corporation, and to the public who deal with the latter, are such as to require good faith and fair dealing in every transaction between him and the corporation, of which he is part owner and controller, which may injuriously affect the rights of creditors or the general public, and a rigid scrutiny will be made into all such transactions in the interest of creditors.—*Sawyer v. Hoag*, vol. 9, p. 145.

#### XVIII. Subscriptions to Stock.

##### 41. Trust Debt.

Unpaid subscription to stock is a trust debt that cannot be set-off against the ordinary debts of the corporation. The subscribers stand, as to such unpaid subscription, in the relation of trustees for the creditors.—*Sawyer et al. v. Hoag et al.*, vol. 9, p. 145.

##### 42. Nominal Payment.

This trust cannot be defeated by a simulated payment of the stock subscription, nor by any device short of an actual payment in good faith.

An arrangement by which the stock is nominally paid, and the money immediately taken back as a loan to the stockholder, is a device to change the debt from a stock debt to a loan, and is not a valid payment as against creditors of the corporation, though it may be good as between the company and the stockholder.—*Sawyer v. Hoag*, vol. 9, p. 145.

##### 43. Set-off.

Under acts authorizing corporations to organize upon payment of a certain proportion, say ten per cent. of the capital, subscribed in cash, and the balance in notes duly secured, the amount so due by a stockholder on these notes, is in the nature of a trust fund pledged to the creditors of the company, and a court of bankruptcy will not allow him to set-off against such trust-indebtedness an ordinary claim (as a loss on a policy in an insurance company) due him by the company. A treasurer of a company is a trustee of the money of the company received by him as treasurer, and cannot set-off against the amount due by him for such funds a claim against the company of ordinary debt, as a loss on a policy in an insurance company.—*Scammon v. Kimball, Assignee*, vol. 8, p. 337.

##### 44. Transferred.

That purchasers of stock from third parties, who surrendered their certificates and accepted new ones in their own names, were entitled to all the privileges and advantages of an original subscription, and succeed to all the liabilities of the original subscriber, hence, the acceptance of a certificate, eighty per cent. of which was un-

paid, and subject to future call, created an implied obligation on their part to pay such balance.—*Upton, Assignee of the Great Western Insurance Company of Chicago, v. Hansbrough*, vol. 10, p. 368.

### XIX. Suspension.

#### 45. Commercial Paper.

The stockholders of a trading corporation agreed to lend money to the company in proportion to their several shares. One of them made the loan by giving his note, which the company endorsed and agreed with him to provide for at maturity. They failed to take up the note when it became due, and the promissor paid it within fourteen days after its maturity.

*Held*, That there had been no suspension of the commercial paper of the company for fourteen days.—*In re Massachusetts Brick Co.*, vol. 5, p. 408.

### XX. Ultra Vires.

#### 46. Usury.

A provision in a bank charter prohibiting it from taking more than a given rate of interest avoids a contract reserving a greater rate.—*Tiffany v. Boutman's Saving Institution*, vol. 9, p. 245.

#### 47. Bonds.

A corporation incorporated for the transaction of the business of life insurance, and not inhibited from borrowing money for legitimate purposes of its business, and from giving notes as evidence of such indebtedness, may, although not expressly authorized to do so, borrow money for use in its legitimate business, and give a time engagement to pay the debt.—*In re Hercules Mutual Life Assurance Society*, vol. 6, p. 338.

#### 48. Board of Trustees.

The action of a board is not the action of the corporation. The corporation must act at a meeting "called for the purpose."—*Lady Bryan Mining Co.*, vol. 4, p. 894.

### COST AND FEES.

See ADJOURNMENT  
ATTACHMENT,  
ATTORNEY AND COUNSEL,  
BANKRUPT,

CLERK,  
CREDITOR,  
DISCHARGE,  
EXAMINATION,  
LIEN,  
MARSHAL,  
PARTIES,  
PETITIONING CREDITOR,  
PROOF OF DEBT,  
REGISTER,  
SECURITY,  
WITNESS.

### COST AND FEES—

- I. Attachment, p. 312.
- II. Assignee, p. 312.
- III. Attorney and Counsel, p. 314.
- IV. Auctioneer, p. 314.
- V. Bankrupt, p. 314.
- VI. Creditors, p. 315.
- VII. Debt, p. 316.
- VIII. Examination, p. 317.
- IX. Marshal, p. 317.
- X. Mortgagee, p. 318.
- XI. Printer's Fees, p. 318.
- XII. Proof of Debt, p. 318.
- XIII. Register, p. 318.
- XIV. Replevin, p. 319.
- XV. Reporter, p. 319.
- XVI. Sheriff, p. 319.
- XVII. Wife of Bankrupt, p. 320.

### I. Attachment.

#### 1. Not Lien.

Costs that accrued under attachment, prior to the filing of the petition in bankruptcy, are not a valid lien on the property unless incurred at defendant's request.—*Preston*, vol. 6, p. 545.

#### 2. Unless Made so by State Law.

The assignee in bankruptcy must recognize, as a preferred claim, any valid lien, even the costs of an attachment, if such costs are a lien by the State law.—*Gardner v. Cook, Assignee*, vol. 7, p. 346.

### II. Assignee.

#### 3. Services Prior to Appointment.

No charges for professional services of counsel to assignees will in general be allowed where the services were rendered prior to the appointment of the assignees.—*In re The New York Mail Steamship Co.*, vol. 2, p. 423.

**4. To be Charged with Deposit.**

The assignee should be charged with the deposit paid, and not the petitioner.—*Anon.*, vol. 1, p. 122.

**5. Personally Chargeable with Cost.**

An assignee is chargeable personally with costs of the proceedings where he files a petition to have an attachment dissolved which covers property that has already been set apart by him as exempt.—*In re C. H. Preston*, vol. 6, p. 545.

**6. In Cases of Removal without Fault.**

Where it is expedient that there should be another assignee substituted, such an order will be made as will fully protect the assignee removed against the cost of the proceeding, if it appears from the testimony that he has acted throughout with entire good faith and energy. The costs of the proceeding must be paid out of the estate.—*In re Mallory*, vol. 4, p. 153.

**7. Under State Law.**

Assignees under the State law cannot receive allowance for attorneys' fees, nor compensation for their own services where the debtor has been adjudged a bankrupt.—*In re J. S. Cohn*, vol. 6, p. 379.

**8. Of Proposed Account in State Court.**

A mere general allowance in the decree of the reasonable charges and expenses of the voluntary assignee, should not be understood as including his expenses of a proposed account in a State court.—*Burkholder et al. v. Stump*, vol. 4, p. 597.

**9. The Following Charges Allowed:**

For publishing notice of appointment, advertising, and posting hand-bills.

A charge for recording assignment is correct.

Of fourteen dollars for two days' services in examining papers, allowed, provided the services were actual, and not constructive, and no charges shall have been for same time in other cases.

For stationery, postage, etc., allowed.

Commission of five per cent.—*Pegues*, vol. 3, p. 80.

**10. Idem.**

Charges for expenses of publishing notice of appointment, advertising sale of property, recording deed of assignment, stationery.

Charges for specific acts, such as draft-

ing notice and acceptance of appointment, petition for order of sale, setting aside certificate of exempted property, are unauthorized; but the acts may be compensated as for general services by reasonable allowance, in the discretion of the court.—*Reilly, Tulley*, vol. 3, p. 82.

**11. Idem.**

Seven dollars for one day's service by assignee in ascertaining value of property, allowed.

Commission on the amount of debt cancelled by compromise with a lien-holder.—*Davenport*, vol. 3, p. 77.

**12. Assignees' Per Diem.**

An assignee, to entitle himself to the *per diem* allowed by Section 17 of the Act, must not only show he actually spent the number of days in attention to the business of his trust, but must also show the necessity for such attention.—*Jones*, vol. 9, p. 491.

**13. The Following Charges Disallowed:**

Specific charges by an assignee are unauthorized for (1) Drafting certificate of exempted property; (2) Drafting petition for sale of property, and (3) Drafting acceptance of notice of appointment.

Specific charges for one day's service in making out report, and another day's service in making application to court for order of sale, disallowed as unauthorized and excessive.

Charge for services of auctioneer disallowed. Assignee must act as salesman, unless leave of court in necessary cases is previously obtained to employ an auctioneer.

Charge of forty-two dollars for six days' services in collecting notes and accounts considered extravagant.—*Pegues*, vol. 3, p. 80.

**14. Idem.**

Assignee has no authority to make specific charges for making and setting aside certificate of exempted property; drafting acceptance and notice of appointment for publication; drafting petition for sale of property, or drafting application for order of compromise.

A charge of eight dollars for one day's service in preparing advertisements is disallowed as unauthorized. A fee of three

dollars allowed. Seventy-five dollars for counsel fees in simply compromising an inconsiderable debt with a lien creditor, under an order of court, questioned and suspended.—*Davenport*, vol. 8, p. 77.

#### 16. *Idem.*

Charge for making deed of conveyance is unauthorized.

Charge for counsel fee of \$25 suspended.—*Reilly, Tully*, vol. 8, p. 82.

### III. *Attorney and Counsel.*

#### 16. Not Preferred Claim.

The claim of an attorney for services and disbursements, is not a claim to be paid in full under Section 28 of the Bankrupt Act.—*In re Louisa Heirschberg*, vol. 1, p. 642.

#### 17. For Petitioning Creditor, Discretionary.

Whether counsel fee shall be allowed petitioning creditors, as well as the measure of such fee, rests with the court, and is a question addressed to its equity.—*In re Daniel Williams*, vol. 2, p. 83.

#### 18. In Opposing Adjudication.

Where attorneys, among other charges against the assignees, claimed payment of fees out of the general fund for professional services rendered in opposing petitions to have a corporation adjudged an involuntary bankrupt,

*Held*, That the services were not rendered to the assignee, but to the bankrupt, prior to the adjudication, and the claim was a debt provable in bankruptcy.—*In re New York Mail Steamship Co.*, vol. 2, p. 554.

#### 19. When Allowed out of Fund.

Upon a suit by the assignee against certain creditors to avoid their liens, the attorneys of those creditors, although successful, are not entitled to any counsel fee out of the general fund in addition to that given by statute.

When the fund has been benefited by the services of counsel, a fee may be allowed out of such fund.—*In re Hope Mining Co.*, vol. 7, p. 598.

#### 20. Docket Fee.

The docket fee of twenty dollars is not taxable in cases of *voluntary* bankruptcy.

But it is in cases of *involuntary* bankruptcy, where there is a "trial" by jury, and in those voluntary cases where, under the 31st Section of the act, the court is authorized to direct a trial upon specifications of objections to the bankrupt's discharge.—*Gordon, McMillan & Co. v. Scott & Allen*, vol. 2, p. 86.

### IV. *Auctioneer.*

#### 21. Necessity for Employment.

The law contemplates that the assignee himself shall sell the property of the bankrupt. Where an auctioneer is employed the assignee must show affirmatively the necessity for such employment, or the auctioneer's charges will not be allowed him by the court in his final account.—*In re Sweet et al.*, vol. 9, p. 48.

### V. *Bankrupt.*

#### 22. Of Creditor in Resisting Discharge.

Where one Coit, a creditor, opposed the discharge of bankrupts in a specification of twenty subdivisions, charging false swearing by the bankrupts on material matters before the Register, and concealment of assets, none of which allegations were sustained,

*Held*, That the discharge be granted, and a decree entered that bankrupts recover from the creditor the costs, to be taxed, of resisting the opposition of their discharge.—*In re Edward Robinson and Enoch Chamberlain*, vol. 3, p. 70.

#### 23. Resisting Adjudication.

A debtor has the right to appear and defend himself against a petition in bankruptcy; hence, although unsuccessful in his defense, the court has the power to allow him such expenses as may be just and proper, including attorney's fees, to be paid from the assets in the hands of the assignee.—*Comstock & Young*, vol. 5, p. 191.

#### 24. *Idem.*

Where a petition is dismissed the debtor is entitled to receive by law the attorney's fees on a hearing in equity twenty dollars. No fee can be taxed for petitioner's attorney.—*Dundore v. Coates & Bros.*, vol. 6, p. 304.

**25. Prior to Adjudication.**

The attorney of bankrupt petitioned to be allowed for services rendered prior to adjudication and up to the time of the choice of an assignee.

*Held*, That they were general creditors of the bankrupt, and must prove their debt in the usual form, for all services rendered prior to the adjudication.—*In re Jaycox & Green*, vol. 7, p. 140.

**26. In obtaining Exemption.**

An attorney is also entitled to be paid, out of the same fund, for services rendered to the bankrupt in securing the allowance of exemptions which were rejected by the assignee.—*In re David B. Comstock and Van E. Young*, vol. 5, p. 191.

**27. For Preservation of Estate.**

Where counsel for involuntary bankrupt petitioned the court for an order to be paid counsel fees and expenses out of the assets in the hands of the assignee, the bankrupt not having the means therefor, and the services rendered being in the preservation of the bankrupt estate for the assignee in bankruptcy,

*Held*, Such order would be made upon the assignee approving in writing the payment of the counsel's bill.—*In re Henry B. Montgomery*, vol. 8, p. 137.

**VI. Creditors.****28. Contribution to Expenses of Adjudication.**

A creditor's petition for an adjudication of bankruptcy against the estate of his debtor, is the same as a creditor's bill against a deceased insolvent. All creditors must contribute *pro rata* to the expenses of the suit.—*Williams*, vol. 2, p. 83.

**29. Petitioning Creditor.**

Where certain creditors, having petitioned and procured adjudication of bankruptcy against the debtor, apply on motion to be reimbursed their reasonable expenses from the assets,

*Held*, That the court has power to order such allowance under the 1st Section of the Bankrupt Act.—*In re Schwab*, vol. 2, p. 488.

**30. Idem, Application for.**

Petitioning creditors are entitled to be reimbursed on motion, for their reasonable

expenses in proceedings against involuntary bankrupts.

They must file claim therefor, and assignees are entitled to be heard against its allowance, and may contest the items of the claim.—*In re Moses and Charles Mittel-dorfer*, vol. 3, p. 1.

**31. Docket Fee.**

In a case where the adjudication has been resisted, the petitioning creditor may recover the costs that are allowed by law to a party recovering in a suit in equity, as defined by act of February 26, 1853, 10 Stat. at Large, 161.

In such case a special allowance for counsel fees cannot be made. It is doubtful if it can be legally done in any case.—*Sheehan*, vol. 8, p. 358.

**32. Examination.**

A creditor is only bound to pay expenses of his own examination. A bankrupt making further statements, after creditor's examination is closed, must pay his own expenses.—*In re Mealy*, vol. 2, p. 128.

**33. Idem.**

Where, on the return of an order to show cause why a bankrupt should be discharged, a creditor appeared and asked leave to examine the bankrupt,

*Held*, The creditor must pay the Register the cost per folio of taking the deposition, but not his *per diem*, or fees for administering oath, or granting certificate.

The creditor must pay for such services performed by the Register at his request, as are in addition to those that the Register would have been compelled to perform had the creditor not appeared.

The bankrupt, or his estate, must pay for such part of the services as would have to be necessarily performed had the creditor not appeared.—*In re Alfred Jackson*, vol. 8, p. 424.

**34. Doubtful Questions.**

When the questions discussed are not free from difficulty no costs will be allowed to either party.—*In re Jaycox & Green*, vol. 8, p. 241.

**35. Attending First Meeting.**

Expenses of creditors in attending first meet of creditors must be disallowed.—*Ward*, vol. 9, p. 349.

**36. Contesting Claims.**

Where the assignee in bankruptcy, at the instance and request of one creditor, contests the validity of the claim of a second creditor, and the cause is decided adversely to the assignee, the creditor at whose instance the proceedings were instituted will be required to pay all the costs of the proceeding, and the creditor whose claim is thus wrongfully contested may have execution therefor.—*In re Troy Woolen Company*, vol. 8, p. 412.

**37. As a Witness.**

A non-resident creditor is not entitled to witness fees under an order to appear and be examined.—*Kyler*, vol. 2, p. 650.

**38. Recording Minutes of Register.**

Among the costs taxed against a creditor who was unsuccessful in opposing bankrupt's discharge, were charges of five dollars for recording minutes of testimony of an examination of the bankrupt before the Register.

*Held*, The cost of such an examination must be paid to the Register by the party applying for it.—*Eidom*, vol. 3, p. 160.

**39. Committee in Cases of Arrangement.**

The committee of creditors provided for in the 43d Section of the Bankrupt Act are entitled to compensation for their services, although the statute is silent on the subject.

It should be limited to such an amount as will afford a reasonable compensation for the services required and rendered, to a person of ordinary standing and ability, competent for such duties and services; and should not be based upon the usages or rates of profit which prevail in any branch of commercial or other business, nor upon the special qualifications or standing of the person who may happen to perform the services.—*In re Treat*, vol. 10, p. 310.

**40. Lien Proving Costs of.**

Where a creditor had a valid lien on real estate of the bankrupt, and after proving the debt in bankruptcy, applied to have said lien satisfied from the proceeds of the sale of said estate by the assignee.

*Held*, That he was so entitled upon deducting therefrom the costs of proving the lien, and there was no prior claim on such proceeds to pay the fees, costs, and general

expenses in bankruptcy.—*In re Hambright*, vol. 2, p. 498.

**41. Fraudulently Preferred.**

A creditor who receives money and merchandise from his debtor, knowing him to be insolvent, is guilty of obtaining a fraudulent preference, hence, if he refuses to surrender to the assignee the property and money so received, he cannot prove his claim, and must pay the costs of the proceedings by the assignee, to compel him to relinquish his preference.—*In re Forsyth & Murthe*, vol. 7, p. 174.

**42. Counsel Fees.**

Where the petitioner, a creditor of bankrupt, employs counsel, and incurs expenses by which all the creditors are benefited, asks that such expenses and counsel fees be defrayed out of the funds in the hands of assignee,

*Held*, That all reasonable expenses be allowed.—*New York Mail Steamship Co.*, vol. 3, p. 627.

**43. Instituting Proceedings.**

So long as it appears that, in fact, the petitioning creditor authorized the institution of the proceedings in his behalf, and so became liable for costs, the matter of signing an authentication is purely formal and unimportant to any right of the debtor.—*Raynor*, vol. 7, p. 527.

**VII. Debt.****44. Cannot be Added to Confer Jurisdiction.**

The petitioning creditors cannot add the costs paid and incurred by them to their debt, in order to raise it above the jurisdictional limit. Such costs are not a part of their debt. The debtor must owe them two hundred and fifty dollars, or they have no right to make costs. Nor can the creditors add counsel fees to their debt. In this case the respondent, having been guilty at the time of the filing of the petition, was ordered to pay all costs up to the time of filing his denial, except the docket fee.—*In re Skelley*, vol. 5, p. 214.

**45. In Obtaining Preference—Deposit \$50.**

Where bankrupt, on his own unsupported affidavit of inability to pay more than the \$50 deposited by him to cover costs and fees, petitioned to have an order



made in his case, that the costs and fees should not exceed that sum,

*Held*, That the proof was insufficient under General Order 80, and order refused.—*In re David Anderson*, vol. 2, p. 537.

#### 46. Deposit.

Expenses and disbursements incurred by creditor in endeavoring to defeat the Bankrupt Act, and thereby obtain a preference, cannot be allowed as a claim against the bankrupt estate.—*In re Archenbrow*, vol. 8, p. 429.

#### 47. Idem.

The sum of \$50, deposited with the clerk, is not a fund in court for general distribution among creditors, but is to be disbursed under the supervision of the court.—*Anon.*, vol. 1, p. 24.

#### 48. Incident to Debt.

A debt or principal must be proven or allowed before the costs made prior to the commencement of proceedings in bankruptcy can be proven and allowed. Costs are but incident; if there is no principal or debt there can be no incident. Where the original debt has been proved and allowed, attachment costs can be proved as a general debt against the estate of the bankrupt, if made in good faith before the commencement of proceedings in bankruptcy without a knowledge of the insolvency of the party, and with no intention to defeat the operations of the Bankrupt Act. Costs incurred after the commencement of bankruptcy proceedings, also costs for attaching and keeping the exempt property, disallowed.—*In re Preston*, vol. 5, p. 293.

### VIII. Examination.

#### 49. Of Cross-Examination.

When witnesses are produced before the Register, each party must pay for the direct examination of his own witnesses, and for such cross-examination as he may make of the witnesses of the adverse party.—*Scotfield v. Moorhead*, vol. 2, p. 1.

#### 50. To be Paid on Application.

Where creditor applies under Section 26 of the Act, for an order for examination of the bankrupt, he must pay the Register's fees allowed by law.—*In re James Macintyre*, vol. 1, p. 11.

#### 51. On Application for Discharge.

Where, on the return of an order to show cause why a bankrupt should not be discharged, a creditor appeared and asked leave to examine the bankrupt,

*Held*, The creditor must pay the Register the cost per folio of taking the deposition, but not his *per diem*, or fees for administering oath, or granting certificate.—*Jackson*, vol. 8, p. 424.

### IX. Marshal.

#### 52. Mileage.

On a bill of costs of United States marshal as messenger,

*Held*, That travel by a United States marshal as messenger to make return on warrant of bankruptcy is necessary, and mileage of five cents per mile therefore is a proper charge.—*Talbot*, vol. 2, p. 280.

#### 53. Idem by Deputy.

The party who serves a subpoena for witnesses is entitled to recover for service and mileage.—*Gordon McMellan & Co. v. Scott*, vol. 2, p. 86.

#### 54. Idem. Marshal—Mileage—Interest.

A United States marshal is authorized to charge for all necessary travel in serving papers, but the language of Section 47 of the Bankrupt Act precludes all constructive mileage; therefore, it is essential that he should name the place of service in his return, in order that the correctness of the mileage charged may appear upon its face.

If he has two or more processes in his hands at the same time, and in the same matter or proceeding, he can charge mileage but once.

Should the service of any one of such processes make additional travel necessary, such additional travel may be charged for in the return.—*Donoghue & Page*, vol. 8, p. 453.

#### 55. Notices to Creditors.

A charge of ten cents per folio for preparing notices to creditors is an improper charge.

An item for attendance is an improper charge.—*In re Talbot*, vol. 2, p. 280.

#### 56. Expenses Protecting Property.

The United States marshal and assignee are officers of the court, and must obey the

orders of the Register, and their necessary expenses and disbursements made by them in the protection of the property of the bankrupt's estate, must be taxed by the Register and paid out of the estate.—*In re Carow*, vol. 4, p. 544.

#### 57. Keeper.

A marshal can only be allowed a charge for a store-keeper, not to exceed two dollars and a half per day, on showing the necessity for his employment, the reasonableness of the price paid, and the actual payment to the store-keeper.—*In re Eugene Comstock et al.*, vol. 9, p. 88.

#### 58. Affidavit of Expenses.

Affidavit of marshal in a case that the expenses were necessarily incurred by him, and are just and reasonable, is insufficient. He must state, in addition, that they were actually incurred and paid.—*Lowenstein*, vol. 3, p. 269.

#### 59. Interest on.

A marshal is not entitled to charge interest upon fees earned, but when his expenditures exceed the amount of money paid to him in advance on account of costs, justice requires that he should be compensated by allowing the usual rate of interest on the excess.—*In re Patrick Donohue and John Page*, vol. 8, p. 453.

### X. Mortgagees.

#### 60. In Sale for Valuation of Security.

A mortgagee of real estate of a bankrupt offered to take the mortgaged property in satisfaction of his debt. The assignee in bankruptcy and the court declined the proposition with a hope of realizing a larger amount. The court then ordered the mortgaged property to be sold, and the mortgage-debt to be paid out of the proceeds, giving the mortgagee a right to bid at the sale. The mortgagee bid in the property at a sum less than the mortgage debt and interest.

*Held*, That the District Court did not err in requiring the mortgagee to pay the costs and expenses of the sale out of the amount bid.—*In re Ellerhorst et al.*, vol. 7, p. 49.

#### 61. Contra, if in Possession.

A mortgagee in possession being entitled to retain all property upon which his mortgage was valid, the expenses of a sale of

such property by order of the District Court should not be paid out of the funds in court *pro rata* with other expenses in bankruptcy.—*Eldridge*, vol. 4, p. 498.

### XI. Printer's Fees.

#### 62. According to U. S. Fee-Bill.

Printer's fees are chargeable according to the United States fee-bill.—*Anon.*, vol. 1, p. 24.

#### 63. Sale of Real Estate.

Rule as to the legal rate of charges for printing advertisements of sale of real estate by order of the court.—*Downing*, vol. 3, p. 741.

### XII. Proof of Debt.

#### 64. Since Amendment.

In Michigan, since the recent amendment has gone into effect, the fee for taking proof of debts is one dollar and eighty-seven cents.—*Clark, Register*, vol. 10, p. 141.

#### 65. Entitled to Priority.

The costs and expenses of the bankruptcy proceedings are entitled to priority of payment out of funds in court derived from the sale of the property.—*In re Whitehead*, vol. 2, p. 599.

### XIII. Register.

#### 66. Reference as to Discharge.

In every case of a petition for a discharge, the clerk will enter a special order referring it to the proper Register for proper proceedings to be had, and the Register, in acting under such special order, will have a fee of five dollars for each day's service, under Section 47.—*In re John Bellamy*, vol. 1, p. 96.

#### 67. On Adjournment of Examination.

Upon return of an order for examination of bankrupt, the attorney for creditor not being ready, the examination was postponed at his request; a question arising as to the fee of the Register in the premises,

*Held*, That a Register is not entitled to a fee of five dollars upon such an adjournment, as for a day's service.—*In re Isaac Clark*, vol. 1, p. 188.

#### 68. Additional Services.

It seems that the Register may, besides the charge for attendance, etc., specified in the 47th Section of the Act of Congress

and in General Order No. 80, make reasonable charges for his additional services in the business of the private sittings preceding the warrant, the business of the first public meeting of creditors or its adjourned sittings, and the business of another public meeting after the application for a discharge.—*Benjamin Sherwood*, vol. 1, p. 345.

#### 69. Custody of Property.

Bankrupts, in the dry goods trade, surrendered all their property to a Register in bankruptcy; who had control and custody, for twenty-five days prior to the appointment of a regular assignee, and under whom sales were made for cash over the counter of the bankrupt's store, and the proceeds safely kept and accounted for.

*Held*, That the Register might be allowed five dollars per day, and a commission of two hundred and fifty dollars for the custody of the money, by way of compensation, payable out of the assets.—*In re Loder Brothers*, vol. 2, p. 517.

### XIV. Replevin.

#### 70. Payment Discretionary with Court.

In replevin cases the costs will be paid according to the discretion of the court.—*Noakes*, vol. 1, p. 592.

### XV. Reporter.

#### 71. Shorthand.

The expenses of a shorthand reporter is not properly taxable as part of the costs.—*In re Waite & Crocker*, vol. 2, p. 452.

### XVI. Sheriff.

#### 72. In Cases of Attachment.

Where an attachment is dissolved by the commencement of proceedings in bankruptcy, the title of the property attached vests in the assignee, but subject to all subsisting liens then existing on the property. Where the proceedings of the sheriff, under an attachment, up to the commencement of proceedings in bankruptcy, were regular and valid, he has a lien on the property for his fees which accrued prior to such commencement, but to no greater extent.—*Housberger v. Zibelin*, vol. 2, p. 92.

#### 73. Idem.

A sheriff is entitled to the expenses incurred by him in keeping property of a bankrupt, from the time of filing the petition until taken possession of by an assignee in bankruptcy, where seized by him prior to the commencement of proceedings in bankruptcy, on an attachment on *mesne* process, which, by said proceedings, became and was in law dissolved.

For the cost of the attachment proceedings, outside of that expended in the protection and care of the property delivered to the assignee, the sheriff can only recover of the party employing him.—*Zeiber v. Hill*, vol. 8, p. 289.

#### 74. Idem.

Where certain creditors attached the stock of goods of a trader for the express purpose of keeping it together and preventing waste, and the attachments were afterwards dissolved by an assignment in bankruptcy, and the sheriff had incurred charges for insurance, packing, etc.,

*Held*, The sheriff has no lien for his costs upon a stock of goods attached by him when the attachment has been dissolved by the proceedings in bankruptcy; but the bankrupt court has power to authorize the assignee to pay such part of the costs as can be shown, or may be presumed, to have been beneficial to the estate.—*In re Fortune*, vol. 2, p. 662.

#### 75. Imprisoning Bankrupt on Judgment for.

A bankrupt cannot be held in the custody of the sheriff of the county, on account of a judgment obtained against him for costs in an action in a State court.—*In re Borst*, vol. 2, p. 171.

#### 76. Poundage.

A sheriff is entitled to poundage on a levy at the time he makes the levy.—*In re Black & Secor*, vol. 2, p. 171.

#### 77. Expenses of Unlawfully Preferred Creditor.

Where a creditor takes an unlawful preference by executions, and seizes the bankrupt's property, the assignee is entitled to recover from the creditor such property or its value, and in the accounting the creditor is only to be allowed credit for the actual expenses of sale, which does not in-

clude the sheriff's fees.—*Sedgwick, assignee, v. Millward*, vol. 5, p. 847.

### XVII. Wife of Bankrupt.

#### 78. Attending as Witness.

The wife of a bankrupt is entitled to witness fees for attendance and travel.

Such fees are to be those prescribed for witnesses by the 3d Section of the Fee Bill Act of February 26, 1853.

The fees of a witness must be tendered or paid to him at the time of the service of the summons or a subpoena.

#### 79. Idem.

The wife of a bankrupt is not bound to appear and be examined, unless she is paid the usual and proper witness fees. The penalty for disobedience of the wife to attend and be examined is visited upon the bankrupt by refusing him a discharge.—*In re Andrew P. Van Tuyl*, vol. 2, p. 70.

#### 80. Summons for Wife of Bankrupt.

An order under section twenty-six of the Act, for the examination of the wife of the bankrupt, may properly be regarded as a summons. Being a summons, it falls within Rule 2 of the "General Orders" in bankruptcy, and therefore blanks of form No. 45, not filled up, but bearing the signature of the clerk and the seal of the court, may, upon application, be furnished to the Registers. *In re John Bellamy*, vol. 1, p. 64.

If there be an adjournment, the witness must be paid for another day's attendance, before he is bound to attend on the adjourned day.—*In re William Griffen*, vol. 1, p. 371.

### COUNTER-CLAIM.

See MUTUAL CREDITS,  
MUTUAL DEBTS,  
PURCHASE OF CLAIMS,  
SET-OFF.

#### 1. Petitioning Creditor.

Where the alleged bankrupt has counter-claims against the petitioning creditor of such a nature as are provable in bankruptcy, and the amount so provable will

### COUNTERSIGNING CHEQUES.

reduce the petitioning creditor's claim below two hundred and fifty dollars, the petition will be dismissed.—*In re Osage Valley and Southern Kansas Railroad Company*, vol. 9, p. 281.

#### 2. Refusal of Bankrupt to Submit to Examination.

So long as a creditor's debt stands proved and unimpeached, a claim made by the bankrupt before the Register that any indebtedness that ever existed from him (said bankrupt) to said creditor was offset and extinguished by a counter-indebtedness, furnishes no ground for a refusal, on the part of the bankrupt, to be sworn and examined on the application of such creditor.—*In re N. W. Kingsley*, vol. 7, p. 558.

#### 3. Withholding Dividend.

The creditors of A. & K. declared a dividend. R., one of the creditors, was also a debtor of A., one of the members of the firm, which debt appeared on A.'s individual schedules.

The assignee had brought a suit in the State court to recover from R. the amount due the estate of A., which action was still pending.

On the refusal of the assignee to pay R. the amount of the dividend, a motion was made to compel payment.

*Held*, That the assignee could withhold the payment of the dividend to R., declared upon the net proceeds of the joint stock of A. & K., until the recovery or the final determination of the suit now pending.

That it is only when the claims of creditors are to be determined that the assignee must consider the estates of the firm and of the individual members separately.—*Atkinson v. Kellogg*, vol. 10, p. 535.

### COUNTERSIGNING CHEQUES.

#### Duty judicial, not ministerial.

The duty of countersigning checks devolved upon the Register by the act is a judicial and not a ministerial duty.—*Clark* vol. 9, p. 67

## COURTS.

See APPEAL,  
ASSIGNEE,  
CONTEMPT,  
DISCHARGE,  
EQUITY,  
EXCLUSIVE JURIS-  
DICTION,  
INJUNCTION,  
JUDGMENT,  
JURISDICTION,  
PRACTICE,  
PROCEEDINGS IN  
BANKRUPTCY,  
STAY OF PRO-  
CEEDINGS,  
WRIT OF ERROR.

## COURTS—

- I. *Bankruptcy Court*, p. 821.
- II. *Circuit Court*, p. 822.
- III. *District Court*, p. 825.
- IV. *Supreme Court*, p. 827.
- V. *State Court*, p. 828.

I. *Bankruptcy Court*.

- (A.) *Arrest*, p. 821.
- (B.) *Cessation of Jurisdiction*, p. 821.
- (C.) *Constitution of*, p. 821.
- (D.) *Decision—Rule of*, p. 821.
- (E.) *Partnership*, p. 821.
- (F.) *Conflict of Jurisdiction*, p. 821.
- (G.) *Mortgage*, p. 822.

(A.) *Arrest*.1. **Power when Debt Fraudulent.**

The bankrupt having been arrested by order of a State court at the suit of creditors whose debt appeared by the order to have been fraudulently contracted, applied to have said order of arrest vacated by the Bankruptcy court, and the said creditors who had subsequently proved the debt in bankruptcy enjoined from further proceedings thereon.

*Held*, That such debt was one not dischargeable in bankruptcy, and the order of the State court could not be vacated or its proceedings set aside. But that the debt being provable in bankruptcy, proceedings of the creditors in their suit in the State court would be stayed until the determination of the Bankruptcy Court on the question of discharge.—*In re Migel*, vol. 2, p. 481.

(B.) *Cessation of Jurisdiction*.2. **With Granting of Discharge.**

The jurisdiction of the Bankrupt court ceases with the granting of a discharge, and the plaintiff may then apply direct to a State court for relief.—*Penny v. Taylor*, vol. 10, p. 201.

(C.) *Constitution of*.3. **Character of.**

A court of bankruptcy is *sui generis* in its nature, and its practice is controlled by the laws that created it.—*Strauss*, vol. 2, p. 48.

4. **Powers Considered.**

Powers of the Bankrupt courts and of the Circuit Courts, and the purpose of Congress in establishing bankrupt tribunals considered.—*Markson & Spaulding, Assignees, v. Heaney*, vol. 4, p. 511.

5. **Creatures of the Statute.**

Courts of bankruptcy are the special creatures of statutory law, and all their jurisdiction is derived from the act which creates them.—*Jobbins, Assignee, v. Montague et al.*, vol. 6, p. 509.

(D.) *Decision—Rule of*.6. **Not Bound by State Court.**

The United States Bankruptcy courts are not bound by the decisions of a State court although the insolvent law under which such decisions are rendered is similar in many of its provisions to the present Bankrupt Law.—*In re Knight*, vol. 8, p. 436.

(E.) *Partnership*.7. **Adjudication after Dissolution.**

Although by proceedings commenced in a State court, a copartnership has been declared dissolved, and all of its assets placed in the hands of a receiver, this will not prevent the copartnership being declared bankrupt on the petition of one of its former members.—*Noonan*, vol. 10, p. 331.

(F.) *Conflict of Jurisdiction*.8. **Prior Proceedings in State Court.**

Objection to the exercise of jurisdiction by Bankruptcy court founded upon the prior proceedings in the State court against the corporation and its property, and the consequent taking of possession of all the alleged bankrupt's estate under such pro-

ceedings before the petition in this case was filed, and under which proceedings it is insisted that the State court has now the exclusive right to administer the estate of the alleged bankrupt, overruled.—*In re Safe Deposit and Savings Institution*, vol. 7, p. 393.

#### 9. Paramount Jurisdiction Touching Bankruptcy.

The plenary and paramount power of Congress to establish uniform laws on the subject of bankruptcies throughout the United States, is given in express terms by the Constitution of the United States. It is, therefore, very clear that when Congress has exercised the power thus conferred, their action must necessarily control or limit the exercise of the power of the States over the same subject matter; and that whenever any State legislation, or any action of the State courts comes practically into actual conflict with the proper execution of the laws of Congress, constitutionally passed under such grant of power, State legislation and the jurisdiction and action of the State courts must yield to the paramount authority of the national government.—*Safe Deposit and Savings Institution*, vol. 7, p. 393.

#### 10. Idem.

A depositor in savings bank filed a bill to have the bank wound up under the State laws. The bank was soon after adjudicated bankrupt.

*Held*, The Bankrupt court had jurisdiction to restrain the prosecution of the depositor's bill in the State court, though commenced prior to the filing of the petition in bankruptcy. — *Citizens' Savings Bank*, vol. 9, p. 152.

#### 11. Cannot Summarily Dispossess Receiver of State Court.

A partner brought action in State court against his copartner for a settlement and winding up of the partnership, and receivers were appointed who took possession of the partnership property. The firm, with its partners, was subsequently adjudged bankrupt on petition of creditors, and assignee in bankruptcy was appointed, who applied and obtained an order from the United States District Court enjoining the plaintiff to the actions in the State

court from further proceedings therein, and that he execute proper instruments to substitute therein the assignee in bankruptcy. On further application of assignee that an order issue for the marshal to take possession of the joint property from the receivers of the State court, etc.,

*Held*, No allegation is made impeaching the validity of the transfer to, and lawful custody of, the joint property by the receivers of the State court, and the Bankruptcy court has no jurisdiction to grant the particular relief asked. Application denied.—*Clark & Bininger*, vol. 3, p. 524.

#### 12. Cannot Withdraw Suits.

The District Court has no authority to withdraw cases from the State court, and proceed to their trial here.—*Sampson v. Burton et al.*, vol. 4, p. 1.

#### (G.) Mortgage.

#### 13. Enjoining Mortgage Foreclosing in State Court.

An assignee in bankruptcy petitioned the Bankruptcy court to enjoin mortgagees from proceedings in the State court, commenced after the adjudication in bankruptcy, to have a receiver appointed, and to foreclose a mortgage on certain real property of the bankrupt in the possession of the assignee as assets; and asked that the mortgage might be declared void, the land sold free from encumbrance, and proceeds distributed.

*Held*, That the Bankruptcy court had jurisdiction, and that the proceeding by petition was regular. The mortgagees would be enjoined as prayed, until determination of the issue of the validity of the mortgage raised by the petition. — *Kerosene Oil Co.*, vol. 2, p. 529.

#### II. Circuit Court.

- (A.) Assignees, p. 323.
- (B.) Bankruptcy Jurisdiction, p. 323.
- (C.) Concurrent " p. 323.
- (D.) Equitable " p. 323.
- (E.) Jurisdiction (generally), p. 323.
- (F.) Original Jurisdiction, p. 324.
- (G.) Prohibition, Writ of, p. 324.
- (H.) Revisory Jurisdiction, p. 324.
- (I.) A State a Party, p. 324.
- (J.) Writ of Error, p. 325.



**(A.) Assignees.****14. Does not Limit Jurisdiction.**

Where an assignee in bankruptcy would be entitled to sue a defendant in the Circuit Court of the United States, by the provisions of the Judiciary Act, his being an assignee in bankruptcy does not restrict his application to the Circuit Court to those cases prescribed by the Bankrupt Act.—*Payson, assignee, v. Dietz*, vol. 8, p. 198.

**15. For Recovery of Property.**

The action given to the assignee by Section 35 of the Bankrupt Act to recover property, or the value thereof, transferred contrary to such section, is within the jurisdiction conferred upon the Circuit Court by Section 2 of said act prior to the amendment of June 22, 1874.—*Brooke & Co. v. McCracken*, vol. 10, p. 461.

**16. Practice in Removing.**

On a revivory petition to the Circuit Court, the proper practice is to direct the District Court to remove the assignee, and to appoint some other competent person in his place.—*In re Perkins*, vol. 8, p. 56.

**(B.) Bankruptcy Jurisdiction.****17. None in Different Districts.**

In this case the Circuit Court for the Minnesota District had no *bankruptcy* jurisdiction, and could exercise only its ordinary equity powers, and for this reason the injunction asked for was refused.—*Markson & Spaulding v. Heany*, vol. 4, p. 510.

**(C.) Concurrent Jurisdiction.****18. Not to Interfere when Prior Proceedings Pending.**

A petition was filed in the United States Circuit Court for the Southern District of Alabama, praying that a receiver might be appointed to take charge of the property of a railroad company.

*Held*, That inasmuch as the Circuit Court of the United States for the Southern District of Mississippi and the Chancery courts of Alabama, Georgia, and Tennessee had acquired jurisdiction, and, as their powers were just as large and they were just as competent to administer full relief, this court would not interfere.—*Alabama & Chattanooga R. R. Co. v. Jones*, vol. 7, p. 145.

**19. Limitation of.**

The concurrent jurisdiction conferred upon the Circuit court by Section 2 of the Bankrupt Act is limited to cases where there is a controversy concerning the right to, or some interest in some specific thing between the assignee and a third person, and does not include an action to collect a simple debt.—*Bachman v. Packard*, vol. 7, p. 353.

**(D.) Equitable Jurisdiction.****20. Supervisory Jurisdiction Restricted to this.**

The general superintendence conferred on the United States Circuit Courts by the first clause of Section 2 of the Bankruptcy Act, is restricted to cases involving some principle of equity. The District Courts have large discretionary powers in matters of bankruptcy, and the Circuit Courts will not interfere with the exercise of such powers, and set aside the appointment by the District Court of an assignee, in a case where it is only claimed that the District Court erred in holding that no election had been made by the creditors, there being no allegation against the fitness of the person appointed.—*Woods et al. v. Buckwell et al.*, vol. 7, p. 405.

**(E.) Jurisdiction.****21. Supplementary to Judiciary Act.**

The jurisdiction conferred on the Circuit Courts of the United States by Section 2 of the Bankrupt Act, is supplementary to and not exclusive of the jurisdiction conferred by the Judiciary Act.—*Payson v. Dietz*, vol. 8, p. 198.

**22. General Superintendence and Jurisdiction.**

Except when special provision is otherwise made, the Circuit Courts have a general superintendence and jurisdiction of all cases and questions arising under the Bankrupt Act.—*Coit v. Robinson and Chamberlain*, vol. 9, p. 289.

**23. Idem. The word "Pending," Construed.**

Jurisdiction is given to the Circuit Court, under the 2d Section of the Bankrupt Act, to revise all rulings, orders, and decrees of the District Court; the word "pending," as used in that section being intended to de-

scribe the particular circuit in which the jurisdiction shall be exercised, and not the state of the matters to be revised.—*Littlefield v. Delaware and Hudson Canal Co.*, vol. 4, p. 258.

(F.) *Original Jurisdiction.*

**24. Controversy touching Bankrupt Property, with Assignees.**

Original jurisdiction is conferred upon the Circuit Courts, concurrent with the District Court of the same district, in all suits of law or in equity which may be brought by the assignee in bankruptcy against any person claiming an adverse interest, or by such person against such assignee, touching any property of said bankrupt, transferable to or vested in such assignee.—*Shearman in error v. Bingham et al.*, vol. 7, p. 490.

(G.) *Prohibition, Writ of.*

**25. Only Issue when Necessary to Exercise of Jurisdiction.**

One Clark commenced action in State court against his co-partner for an accounting, and receivers were appointed who took possession of the firm property. Pending such proceedings the firm, with its members, was declared bankrupt upon petition of firm creditors. Clark petitioned to the United States Circuit Court for a review of the decree adjudicating him a bankrupt, and commenced successively two other actions in State court, and obtained injunctions restraining creditors from prosecuting proceedings in bankruptcy. Creditors thereupon moved the Circuit court for a writ of prohibition, under the Judiciary Act of 1789, directed to the State court in the premises.

*Held*, The court can grant such writ only in cases where it is necessary for the exercise of its jurisdiction. Such jurisdiction in this case is revisory, and is not obstructed or interfered with by the actions prosecuted by Clark in the State court.—*In re Abraham Bininger et al. (who are Creditors of the said Bininger and Abraham B. Clark) for a Writ of Prohibition*, vol. 3, p. 481.

(H.) *Revisory.*

**26. Of District Court.**

The jurisdiction of the Circuit Court is

revisory, and a party cannot come there in the first instance to make his case or present any question for decision.—*Alabama and Chattanooga R. R. Co. v. Jones*, vol. 7, p. 145.

**27. Idem.**

The Circuit Court has jurisdiction to revise, correct, and reverse rulings and judgments of the District Court in bankruptcy proceedings.—*Langley v. Perry*, vol. 2, p. 596.

**28. Does not Transfer Entire Proceedings in Bankruptcy.**

The powers of the Circuit Court in bankruptcy cases are revisory only, and the proceedings for review bring only the decree and orders involved in it, before the Circuit Court, and do not operate to transfer to it the entire bankruptcy proceedings to be continued there as a court of first instance.—*Clark v. Bininger, etc.*, vol. 3, p. 487.

**29. When Exercisable "Term" Vacation.**

The power of review is conferred by the Bankrupt Act on the Circuit Court in term time, or a circuit judge in vacation.—*Alabama and Chattanooga R. R. Co. v. Jones*, vol. 5, p. 98.

**30. Confirmation of Sale.—Supervisory Jurisdiction.**

The decision of a District Court, sitting in bankruptcy, upon an application to confirm a sale made of a bankrupt's estate, is not a matter within the general supervisory jurisdiction conferred by Section 2 of the Bankrupt Law of 1867, 14 Stat. at L., 520, upon the Circuit Courts.—*York & Hoover*, vol. 4, p. 479.

(I.) *State.*

**31. Between a State and its Citizens.**

The Circuit Courts of the United States have not jurisdiction of a case either at law or in equity, in which a State is plaintiff against its own citizens. The Constitution of the United States does not confer such jurisdiction, nor is it conferred by any act of Congress. Such jurisdiction is not conferred upon the Circuit Court in this case by the Bankruptcy Act of 1867, because there are other necessary parties

than the assignee in bankruptcy, and without such parties the plaintiff could not sustain his suit in any court.—*The State of North Carolina v. Trustees of University and C. Dewey, Assignee, et al.*, vol. 5. p. 466.

### 32. Writ of Prohibition.

Clark petitioned to the United States Circuit Court for a review of the decree adjudicating him a bankrupt, and commenced successively two other actions in State court, and obtained injunctions restraining creditors from prosecuting proceedings in bankruptcy. Creditors thereupon moved the Circuit Court for a writ of prohibition, directed to the State court in the premises.

*Held*, The court can grant such writ only in cases where it is necessary for the exercise of its jurisdiction. Motion denied.—*Bininger et al.*, vol. 8, p. 481.

#### (J.) Writ of Error.

### 33. To Review Erroneous Charges in the District Court.

Where respondent demands a jury trial on the return day, and, upon such trial the court gives to the jury what is claimed to be erroneous charges, the Circuit Court has jurisdiction to review these rulings.—*Knickerbocker Ins. Co. v. Comstock et al.*, vol. 8, p. 145.

### 34. Dismissed for want of Jurisdiction.—Mandamus.

Where the Circuit Court dismissed a writ of error properly sued out, for want of jurisdiction, the proper mode to apply for the interposition of the Supreme Court of the United States is by the writ of mandamus, not by writ of error.—*Knickerbocker Ins. Co. v. Comstock et al.*, vol. 8, p. 145.

### III. District Court.

(A.) Arrest, p. 325.

(B.) Assignee, p. 325.

(C.) Attachment, p. 325.

(D.) Character of Jurisdiction, p. 325.

(E.) Completeness of Jurisdiction, p. 326.

(F.) Discharge, p. 326.

(G.) Discretion, p. 326.

(H.) Equitable Jurisdiction, p. 326.

(I.) Estates of Decedent, p. 326.

(J.) Exclusive Jurisdiction, p. 326.

(K.) Injunction, p. 326.

(L.) Law, p. 326.

(M.) Lien, p. 326.

(N.) Original Jurisdiction, p. 327.

(O.) Proof of Debt, p. 327.

(P.) Rules (General), p. 327.

(Q.) State Courts, p. 327.

#### (A.) Arrest.

### 35. May Examine Cause of.

A United States District court has power to relieve a bankrupt from arrest, on process of a State court, in an action founded upon a debt that may be discharged in bankruptcy. The question whether the debt be one contracted in fraud, may be examined into and determined by the District Court.—*In re Louis Glaser*, vol. 1, p. 336.

#### (B.) Assignee.

### 36. May Empower to Finish Chattels.

The District Court in bankruptcy has power to authorize the assignee to expend money in finishing chattels which he finds in an incomplete state and unsalable, when it is made to appear that this can be done within a reasonable time and at a reasonable expense, and that thus they will further procure a large receipt to the creditors.—*Foster et al. v. Ames et al.*, vol. 2, p. 455.

#### (C.) Attachment.

### 37. Over Four Months.—Jurisdiction not Exclusive.

The bankrupt's certificate of discharge duly pleaded, will not dissolve an attachment made by virtue of the writ in the action, more than four months prior to the defendant's commencement of proceedings in bankruptcy. The attachment thus made may be enforced by an execution issued upon a special judgment rendered by the court in which the action was entered and prosecuted. The District Court of the United States does not have exclusive jurisdiction in such matters.—*Leighton v. Kelsey et al.*, vol. 4, p. 471.

#### (D.) Character of Jurisdiction.

### 38. Regular, between Party and Party.

The jurisdiction intended to be conferred by the Bankrupt Act on the United States District and Circuit courts, is the regular jurisdiction between party and party, as

described in the 11th Section of the Judiciary Act, and the 8d Article of the Constitution; consequently, it follows that final judgments in such civil actions, or final decrees in such suits in equity, rendered in cases where the matter in dispute exceeds, exclusive of costs, the sum of two thousand dollars, may be re-examined in the Supreme Court, under the 22d Section of the Judiciary Act, when properly removed there by writ of error or appeal.—*Coit v. Robinson et al.*, vol. 9, p. 289.

(E.) *Completeness of Jurisdiction.*

**39. Administration of Estate.**

The United States District Court sitting in bankruptcy has full and complete jurisdiction to administer the estate of the bankrupt.—*T. A. & J. M. Allen & Co. v. Montgomery et al.*, vol. 10, p. 504.

(F.) *Discharge.*

**40. May Revoke Decree Granting.**

The District Court sitting in bankruptcy has a right to recall a final decree granting a discharge to a bankrupt upon application made during the term of court at which the decree was passed. *It seems* that the court has the power to do this after the term has ended.—*In re Dupee*, vol. 6, p. 89.

(G.) *Discretion.*

**41. Large Powers.**

The District courts have large discretionary powers in matters of bankruptcy, and the Circuit courts will not interfere with the exercise of such powers, and set aside the appointment by the District Court of an assignee, in a case where it is only claimed that the District Court erred in holding that no election had been made by the creditors, there being no allegation against the fitness of the person appointed.—*Woods et al. v. Buckwell et al.*, vol. 7, p. 405.

(H.) *Equitable Jurisdiction.*

**42. Bill to set aside Fraudulent Conveyance.**

The District Court has jurisdiction of a bill in equity by an assignee in bankruptcy to set aside a conveyance of land alleged to be fraudulent as to creditors,

although there may be concurrent remedy at law.—*Platt v. Curtis*, vol. 6, p. 139.

**43. Equity Jurisdiction Conferred by the Act.**

The United States Bankrupt Act, now in force, confers jurisdiction in equity upon the District courts in certain cases.—*Scammon v. Cole et al.*, vol. 5, p. 257.

I.) *Estates of Decedents.*

**44. No Jurisdiction.**

The District Court refused to grant an order to show cause. On appeal

*Held*, That the District Court properly refused to grant the order to show cause, for the reason that the Probate court of the State had first obtained jurisdiction, and had the right to continue and also to retain possession of the partnership effects.—*In re Daygell*, vol. 8, p. 433.

(J.) *Exclusive Jurisdiction.*

**45. In Matters in Bankruptcy.**

The jurisdiction of the United States District courts, sitting as courts of bankruptcy, is superior and exclusive in all matters arising under the Bankrupt Act.—*Barrow; Loeb Simon & Co.; Winter*, vol. 1, p. 481.

(K.) *Injunction.*

**46. Effect in other Districts Doubted.**

Whether the Bankruptcy Act confers upon the District Court sitting in bankruptcy the power to issue an injunction which shall run throughout the United States and to stay proceeding in State and Federal courts, *quære*.—*In re Hirsch*, vol. 2, p. 3.

(L.) *At Law.*

**47. Full Jurisdiction.**

United States District courts have full and adequate jurisdiction in all matters relating to bankruptcy, at law and in equity.—*Bowie*, vol. 1, p. 628.

**48. Idem.**

Under the provisions of the Bankrupt Act the District courts have jurisdiction both in law and equity.—*Fendley*, vol. 10, p. 250.

(M.) *Lien Creditor.*

**49. May Restrain Claimant.**

The United States District Court has ample power to restrain a claimant of a lien, obtained by collusion with the bank-

rupt, from proceeding elsewhere to enforce his lien, and this power may be summarily exercised without a formal suit. When necessary, for the protection of the bankrupt's estate, or in furtherance of justice, an order once made may be revoked.—*Samson, Assignee, v. Clark & Burton*, vol. 6, p. 403.

(N.) *Original Jurisdiction.*

**50. Between Assignee and Third Persons.**

The District courts have original jurisdiction of all cases and controversies between third persons and the assignee in bankruptcy as such.—*Bachman, Assignee, v. Packard*, vol. 7, p. 353.

**51. All Matters and Proceedings in Bankruptcy.**

The United States District Court has original jurisdiction in all matters and proceedings in bankruptcy.—*Sweatt v. Boston, Hartford & Erie R. R. Co.*, vol. 5, p. 234.

**52. And Actions in a Different District.**

District courts of the United States have jurisdiction, by reason of the subject matter, over all proceedings in bankruptcy, and over all actions brought by assignees in bankruptcy, *even though such actions be not brought in the district where the proceedings are pending.* The jurisdiction of the District Court is not *exclusive*.—*Payson v. Dietz*, vol. 8, p. 193.

(O.) *Proof of Debt.*

**53. Practice in Reinstating.**

The District Court has power, upon petition of the contesting creditor, to reverse the decision of an assignee rejecting his claim, but the mode of proceeding must be regular, and the assignee should have opportunity to answer and contest the claim.—*Mitledorfer & Co.*, vol. 8, p. 39.

(P.) *Rules (General).*

**54. Cannot Make.**

The United States District Court has no power to make general rules, such power being vested elsewhere by Section 10 of the Bankrupt Act.—*In re Donald A. Kenny & Angus Mackintosh*, vol. 7, p. 337.

(Q.) *State Courts.*

**55. To Enjoin.**

The U. S. District courts have jurisdiction to enjoin proceedings in State courts, touching property held by the assignee in bankruptcy within their respective districts.—*N. Y. Kerosene Oil Co.*, vol. 3, p. 125.

**56. Idem.**

The United States District Court sitting in Bankruptcy has power to enjoin the sheriff of a State court or parties litigant therein, from proceeding to sell property levied upon by virtue of a writ of execution issued out of such court upon a judgment obtained therein before proceedings in bankruptcy were commenced.—*In re E. Mallory*, vol. 6, p. 22.

**57. Suspension and Control of.**

The United States District courts have full jurisdiction to suspend or control all proceedings in State courts against the bankrupt or his assets.

The adjudication in bankruptcy does not *per se* divest the State court of jurisdiction over the bankrupt or his assets, or suspend proceedings pending therein.

The Bankrupt court will only exercise its control over litigants in the State courts when necessary to sustain or protect an equity of the bankrupt estate, or to prevent a sacrifice of the interest of the general body of creditors to the greed of one.—*In re Davis*, vol. 8, p. 167.

IV. *Supreme Court.*

**58. Over Circuit Court Exercising Supervisory Jurisdiction.**

The Supreme Court has no appellate jurisdiction of decisions of the Circuit Court, exercised in supervising the summary proceedings of the District Court, but only of the decisions of the Circuit Court in cases brought there originally and by writ of error or appeal from the District Court.—*Marshall v. Knox et al., Assignees*, vol. 8, p. 97.

**59. Idem.**

The Supreme Court has not appellate jurisdiction of decisions rendered by the Circuit courts, in the exercise of the supervisory jurisdiction given them by the Bankrupt Law over decisions of the District



courts in proceedings in bankruptcy.—*Hall v. Allen*, vol. 9, p. 6.

#### 60. Final Decrees in Equity.

That decrees in equity, in order that they may be re-examined in this court, must be final decrees, rendered in term time, as contradistinguished from mere interlocutory decrees or orders, which may be entered at chambers, or, if entered in court, are still subject to revision at the final hearing. If this rule were not followed in allowing appeals to the United States Supreme Court, every question arising in the courts may be indefinitely protracted, and the beneficent purposes of the Bankrupt Act be thereby defeated.—*Morgan et al. v. Thornhill et al.*, vol. 5, p. 1.

#### 61. Circuit Court Refusing to Exercise Jurisdiction.

Where the Circuit Court merely refuse to entertain a bill to review proceedings in the District Court, it will be presumed that this refusal was based upon want of merits in the bill, and from this decision no appeal lies to the Supreme Court. But where the Circuit Court places its decision dismissing the bill on want of jurisdiction to entertain it, from this decision an appeal will lie to the Supreme Court, not to pass upon the merits of the bill, but to enable the complainants to have a hearing before the Circuit Court, if they be thereto entitled.—*The First National Bank of Troy v. Cooper et al.*, vol. 9, p. 529.

#### V. State Court.

- (A.) *Arrest*, p. 328.
- (B.) *Assignee*, p. 328.
- (C.) *Bankruptcy, Plea of*, p. 329.
- (D.) *Character of Jurisdiction*, p. 329.
- (E.) *Disputed Amount*, p. 329.
- (F.) *Distribution*, p. 329.
- (G.) *Discharge*, p. 330.
- (H.) *Foreign Bankruptcy*, p. 330.
- (I.) *Forfeiture of Charter*, p. 330.
- (J.) *Fraud*, p. 330.
- (K.) *Judicial Notice*, p. 330.
- (L.) *Jurisdiction*, p. 330.
- (M.) *Liens*, p. 331.
- (N.) *Limitation*, p. 331.
- (O.) *Mortgages*, p. 331.

- (P.) *Motion*, p. 332.
- (Q.) *Receiver*, p. 332.
- (R.) *Restraining Suits*, p. 332.
- (S.) *Replevin*, p. 333.
- (T.) *Stay of Proceedings*, p. 333.
- (U.) *Supplementary Proceedings*, p. 333.
- (V.) *Withdrawal of Case*, p. 334.

#### (A.) Arrest.

#### 62. Arrest Under Process of, may be Relieved by Bankrupt Court.

A United States District court has power to relieve a bankrupt from arrest, on process of a State court, in an action founded upon a debt that may be discharged in bankruptcy.—*In re Louis Glaser*, vol. 1, p. 336.

#### 63. May Arrest on Fraudulent Debt after Adjudication.

After a bankrupt had filed his petition in bankruptcy he was arrested under an order of a State court on an action to recover a debt that was shown, by affidavits, to have been fraudulently contracted.—*Rosenberg*, vol. 2, p. 236.

#### (B.) Assignee.

#### 64. Conveyances Voidable by Bankrupt Act only.

An assignee in bankruptcy cannot maintain an action in the State courts to recover property transferred by the bankrupt while insolvent to a creditor, with a view to give such creditor a preference over the other creditors.

Such a transfer is only forbidden by the Bankrupt Act. It is not a fraud under the statute of the State, nor is it contrary to public policy or good morals.

The provisions in the Bankrupt Act in that regard are penal in their character and the courts of the State will not exert their jurisdiction to enforce them.—*Bingham v. Claflin et al.*, vol. 7, p. 412.

#### 65. Contra.

An assignee in bankruptcy may sue in a State court to recover property transferred prior to adjudication in fraud of the Bankrupt Act, even in cases where, but for the provisions of Bankrupt Act, the transfer would have been valid.—*Cook v. Waters et al.* vol. 9, p. 155.



**66. Idem.**

An assignee in bankruptcy may sue in the State, as well as the United States courts, to recover property disposed of by the bankrupt, in fraud of the Bankrupt Act.—*Gilbert v. Priest*, vol. 8, p. 159.

**67. Idem.**

The jurisdiction of the State courts over such actions is supported by the construction given to the act of 1841, and by the decisions under the recent act of the Supreme Courts of Massachusetts, Pennsylvania, Kentucky, and Indiana.—*Cook et al.*, vol. 9, p. 155.

**68. Limitation in Suits Brought by Assignee.**

An assignee may sue or be sued in the State courts, but Section 2 of the Bankrupt Act of 1867, limits the bringing of an action of this kind to two years from the time the cause of action accrued for or against such assignee.—*Daniel Cogdell v. William J. Exum*, vol. 10, p. 827.

**69. Assignee may Sue in by Permission.**

State courts may entertain suits by an assignee in bankruptcy where he resorts to said courts by the consent and concurrence of the Bankruptcy court.—*Payson v. Dietz*, vol. 8, p. 193.

**(C.) Bankruptcy, Plea of.****70. Bars Suit for Conversion of Personal Property.**

The plea of bankruptcy interposed in a suit brought in a State court, to recover damages for wrongful conversion of personal property, is a complete bar, and entitles the bankrupt to a dismissal of the cause.—*Cole v. Roach*, vol. 10, p. 288.

**71. Suspend Pending Suits.**

Where the declaration of bankruptcy has been suggested and not denied, the plaintiff is estopped from further proceeding with his suit in the absence of an order authorizing it.—*Penny v. Taylor*, vol. 10, p. 201.

**(D.) Character of Jurisdiction.****72. Subject to the Will of the Legislature.**

State tribunals are not amenable to Congress. They are established by a different sovereignty which may at any time deny

the use of its tribunals to entertain suits in favor of assignees in bankruptcy, and neither Congress nor the Federal courts could prevent it.—*Goodall v. Tuttle*, vol. 7, p. 193.

**73. Over Insolvent Corporations, Incomplete.**

The State laws do not extend to all the matters arising in bankruptcy, such as preferences and property out of the State, and even if it be granted that the State courts have concurrent jurisdiction of an insolvent corporation, they have not full jurisdiction of the subject matter.—*In re Independent Insurance Co.*, vol. 6, p. 160.

**74. Over Criminal Matters not Excluded.**

The liability of a bankrupt to criminal prosecution in the courts of the United States, under Section 44 of the Bankrupt Act of 1867, for obtaining goods on credit, with intent to defraud, and under false color and pretense of dealing in the ordinary course of trade, within three months before the beginning of the proceedings in bankruptcy, does not exclude the courts of the Commonwealth from jurisdiction of him and others for conspiring to obtain the goods by false pretense, under Gen. Sts., C. 161, Section 54, and St. of 1863.—*Commonwealth v. Walker et al.*, vol. 4, p. 672.

**(E.) Dispute as to Amount Due.****75. Suit may be Continued for Purpose of Ascertainment.**

Where amount due to a creditor is in dispute in a State court, the Court of Bankruptcy may allow the suit to proceed for the purpose of ascertaining the amount due, but execution will be stayed if the debt is such as will be discharged by a discharge in bankruptcy.—*In re Rundle & Jones*, vol. 2, p. 113.

**(F.) Distribution of Assets.****76. Cannot Interfere with.**

The distribution of the assets of a bankrupt cannot be interfered with by process of a State court. Money awarded under a rule of court cannot be attached.—*In re Bridgman*, vol. 2, p. 252.

**(G.) Discharge.****77. Cannot be Annulled by.**

The authority to set aside and annul a discharge in bankruptcy, conferred upon the Federal court by Section 34, is incompatible with the exercise of the same power by a State court; and the former is paramount.—*Corey et al. v. Ripley*, vol. 4, p. 503.

**78. Idem.**

A bankrupt's discharge cannot be impeached in a State court for any of the reasons which would prevent the United States District Court from granting it.—*Alston v. Robinett*, vol. 9, p. 74.

**(H.) Foreign Bankruptcy.****79. Title to Property within State not Transferable by.**

The courts of the State of New York will not recognize or enforce a right or title acquired under foreign bankrupt laws or foreign bankrupt proceedings, so far as affects property within their jurisdiction or demands against residents of this State.

There is no distinction, in this respect, between cases of voluntary and of involuntary bankruptcy.—*Mosselman and Poelaert, trustees, v. Meyer Caen*, vol. 10, p. 513.

**(I.) Forfeiture of Charter.****80. Insolvent Corporation.**

A bank, incorporated under the laws of the State of Louisiana, became insolvent, and the Attorney-General of the State, in 1868, proceeded in a State court at the instance and by request of the bank, and thereupon a decree was rendered forfeiting its charter, and directing its affairs to be wound up in accordance with the insolvent laws of the State. In 1869, creditors of the bank petitioned to have its assets surrendered and administered upon in bankruptcy, and were opposed by the State Insolvent Commissioners.

*Held*, The State court had no jurisdiction in the premises, except to the extent of decreeing a forfeiture of the bank charter, when its jurisdiction ended—*Thornhill et al. v. Bank of Louisiana, and Williams v. Same*, vol. 3, p. 435.

**(J.) Fraud.****81. Estops Pleading Discharge.**

A debtor will be estopped pleading in bar, in a suit in a State court, a discharge in bankruptcy obtained *pendente lite*, where he fraudulently concealed from his creditor the pendency of the bankrupt proceedings until after discharge granted, and the creditor had no other notice of the pendency of such proceedings.—*Batchelder, administrator, v. Low*, vol. 8, p. 571.

**82. Prevents Suspension of Suit.**

The pendency of proceedings in bankruptcy against a debtor does not suspend proceedings against him in a State court by the creditor when the bankrupt, who was the last indorser on a note, fraudulently appropriates and embezzles the proceeds thereof, nor can such creditor be restrained by a decree of the United States Circuit Court from proceeding *ex delicto* against the debtor on account of his fraud, for the reason that debts of this nature are expressly excepted from the operation of the Bankrupt Act.—*Horter et al. v. Harlan*, vol. 7, p. 238.

**(K.) Judicial Notice.****83. Existence of Federal Courts.**

The State courts are bound to take judicial notice of the existence of the Federal courts, and it is also supposed that they will know something of the laws of Congress, though not generally called on to administer them.—*Morris v. Swartz*, vol. 10, p. 305.

**(L.) Jurisdiction.****84. Insolvent Corporations.**

The Bankrupt Act does not divest the States of power to pass laws for winding up the estates of insolvent corporations. The jurisdiction conferred upon the courts of Bankruptcy in this respect is superior but not exclusive to that of the State laws.—*Chandler v. Siddle*, vol. 10, p. 236.

**85. Ordinary Suits without Interference of Bankrupt Court.**

The jurisdiction of the ordinary tribunals over suits to which the bankrupt is a party, is not taken away by mere force of the adjudication; but the Bankruptcy court has jurisdiction to suspend or con-

trol such proceedings, by acting on the parties.

In the absence of such interference, the jurisdiction of the State courts remains unimpaired, and their decrees and judgments are valid and effectual.—*In re Irwin Davis*, vol. 4, p. 716.

#### 86. Enforcement of Liens.

On a motion to dismiss a petition to enforce a mechanic's lien in Massachusetts, on the ground that petitioners, on their own petition, had been subsequently adjudged bankrupts in the United States Bankruptcy Court,

*Held*, The mechanic's lien was not dissolved thereby.

The State court may entertain the petition without necessarily conflicting or interfering with the jurisdiction of the Bankruptcy Court. Motion to dismiss denied, and case ordered to stand continued to await the result of the action of that court.—*Clifton et al. v. Foster et al.*, vol. 3, p. 656.

#### 87. Estate of Insolvent prior to Bankrupt Act.

The United States Bankrupt Law does not, however, divest the State courts of the jurisdiction necessary to the final administration of the estate of an insolvent who had made a surrender previous to its passage.—*Meekins, Kelly & Co. v. Their Creditors*, vol. 3, p. 511.

#### 88. Priority of Attachment.

A State court having acquired jurisdiction, a United States court has no authority by which it may oust the jurisdiction of the State court.—*Clark v. Bining*, vol. 3, p. 518.

#### (M.) Of Liens.

#### 89. Enforcement of.

When the United States courts, under the Bankrupt Act of 1867, have acquired jurisdiction of the estate of a bankrupt, the State courts lose jurisdiction of all claims against him provable under the Bankrupt Act, except specific liens upon his property, and legal or equitable claims of title thereto; and the homestead and exemption provisions of the Constitution of 1868 of Georgia do not create such a specific lien upon, or title to his estate, in

favor of his family, as may be heard and adjudicated by the State courts pending the proceedings in bankruptcy.

Whether said claim is such a debt in favor of the family, as may be proven before the Bankrupt Court, independently of the exemption granted by the Bankrupt Law to the bankrupts, it is for that court alone to decide.—*Gertrude J. Woolfolk v. Joseph E. Murray, Benjamin D. Bryan v. C. C. Sims*, vol. 10, p. 540.

#### 90. Cannot be Acquired after Adjudication.

After the filing of a petition in bankruptcy, no valid lien can be acquired upon property of the bankrupt by proceedings in a State court; and an assignee is not bound to go into a State court to defend such a suit, the action being a nullity as to him.—*Stuart, Assignee, v. Hines et al.*, vol. 6, p. 416.

#### 91. Restraining Enforcement.

An unimpeached creditor's lien having, before the commencement of voluntary proceedings in bankruptcy, attached upon part of bankrupt's estate, no consideration of probable sacrifice of the subject of the lien under judicial proceedings for its enforcement in a State court, will induce a court of the United States to restrain, delay, or hinder the creditor from prosecuting them.—*Ex parte Donaldson*, vol. 1, p. 181.

#### (N.) Limitation.

#### 92. Power of Congress to Establish.

Section 2d of the present United States Bankrupt Act does not preclude a State court from jurisdiction on an action by the assignee on a cause which accrued to the bankrupt. It is within the power of Congress, in establishing a uniform system on the subject of the limitation of actions, which rule must, of necessity, supersede all State legislation on the subject.—*Peiper v. Harmer*, vol. 5, p. 252.

#### (O.) Mortgagees.

#### 93. Sale by Mortgagee after Filing of Petition.

Where a mortgagee proceeded in the State court, after petition in bankruptcy was filed by the mortgagor, with knowledge thereof, to foreclose his mortgage without

first obtaining the permission of the Bankrupt Court,

*Held*, He was in contempt and the sale itself a nullity; by the filing of the petition all the property of the bankrupt is *eo instante* placed in the custody of the District Court.—*Phelps, Assignee, v. Sellick*, vol. 8, p. 390.

#### 94. Not Permitted to Sue in.

Mortgagees should not be permitted to pursue the estate of the bankrupt in the State courts, but should come to the tribunal which under federal laws is charged with its administration.—*In re Brinkman*, vol. 7, p. 421.

#### 95. Foreclosure by Permission Stops Assignee.

A foreclosure sale against property of a bankrupt, taking place in the State court, by permission of the Bankrupt Court, cannot be afterwards set aside by an assignee in bankruptcy, and the purchaser at such sale will be compelled to take title.—*Lenihan v. Harman et al.*, vol. 8, p. 557.

#### (P.) Motion.

#### 96. To Correct Minutes, Nunc pro Tunc.

The bankruptcy of the defendant is no reason why the Superior Court of this State should not hear and decide upon a motion to correct its minutes and make them speak the truth, by entering *nunc pro tunc* upon its minutes the verdict of the jury rendered years previously in a suit against the bankrupt.

The order should be so framed as to work no harm to any of the parties to the motion growing out of the failure of the plaintiff to have his verdict entered at the proper time.—*Thomas J. Woolfolk et al. v. Daniel F. Gunn*, vol. 10, p. 526.

#### 97. Priority of Proceedings.

Where this court first obtains possession of property and control of litigation, it has the right to finish proceedings before being interfered with by the Bankrupt Court, and if the assignee in bankruptcy has rights they will be protected.—*Appleton v. Bowles*, vol. 9, p. 354.

#### 98. Person Claiming Adverse Interest to Assignee.

State courts have no jurisdiction of a suit by a person claiming an adverse in-

terest against an assignee in bankruptcy.—*Voorhees v. Frisbie*, vol. 8, p. 152.

#### (Q.) Receiver.

#### 99. Appointment merely Suspensive.

Where the court takes possession of property and places the same in hands of a receiver, the rights of parties are not thereby affected. The receiver holds for the *legal owner*—and the action of the court is merely suspensive.—*Miller v. Bowles et al.*; *Appleton v. Stevers, etc., et al.*, vol. 10, p. 515.

#### 100. After Dissolution Exists for Purposes of Bankruptcy.

A corporation that has been dissolved, by a decree of a State court, and a receiver appointed, still exists for the purpose of being proceeded against in bankruptcy: hence, an adjudication is valid if the corporation by answer admits the acts of bankruptcy alleged against it, although the receiver may not have been a party to the answer, or given his assent to such adjudication. No power exists to wrest from the jurisdiction of the courts in bankruptcy the assets of such bankrupt individuals and corporations as are within the scope of the provisions of the United States Bankrupt Act.—*In re Independent Insurance Co.*, vol. 6, p. 260.

#### (R.) Restraining Suits.

#### 101. Restraining Suits in, by Assignee, for Want of Jurisdiction.

A petition was filed by a creditor to restrain the assignee in bankruptcy from prosecuting a certain action of law in the Supreme Court of New York State to recover the payment of money made contrary to the provisions of the 39th Section of the Bankrupt Act, claiming to recover back the amount so paid.

*Held*, That said act is the law of the State courts as well as of the national tribunals, and if by virtue of that act the State court has no jurisdiction in the action brought against the petitioners, it will so decide upon proper plea and that no reason appears to compel the assignee to resort to the national tribunals instead of those of the State.—*In re The Central Bank*, vol. 6, p. 207.

**102. District Court Cannot.**

The principle decided in Campbell's case, that the District courts of the United States have no power to issue injunctions to State courts, affirmed.—*In re S. & M. Burns, ex parte William Burns*, vol. 1, p. 174.

**103. Possession of Receivers not Interfered with.**

The United States District Court in bankruptcy will not interfere with the possession of receivers appointed by the State Courts to take charge of the property of a railroad, until their title is impeached for some cause for which it is impeachable under the Bankrupt Act; nor is it for the Bankruptcy court, before such title is thus impeached, to interfere with the management or control of such railroads and other property by such State courts or by such receivers under the orders of such State courts.

Injunction heretofore granted in this case so far modified as to allow the receivers to enter upon the discharge of their duties and give the security required by the State court.—*Alden v. Boston, Hartford & Erie R. R. Co.*, vol. 5, p. 230.

**104. To Enable District Court to Liquidate Liens.**

The District Court has jurisdiction to ascertain and liquidate all liens upon the bankrupt's property, and in the exercise of this jurisdiction may enjoin a creditor from enforcing a judgment in a State court against the property of the bankrupt; but after the process of the State court has been executed by a sale of property, the District Court will not interfere.—*Fuller*, vol. 4, p. 116.

**105. In Suit by Copartner for Dissolution and Settlement.**

Rights and rights of action of a bankrupt, in suits and actions pending in State courts, pass and vest in the assignee in bankruptcy. The bankrupt C. ordered to execute proper instruments to enable the assignee to represent him in his action in the State court, and enjoined further proceedings in respect thereof without leave of the Bankruptcy Court.—*In re Abraham B. Clark, and Abraham Binger*, vol. 3, p. 491.

**(S.) Replevin.****106. Property Taken by Marshal from Claimant.**

The property of a debtor was levied on by the sheriff, but was taken from his possession in a suit of claim and delivery brought in a State court by parties claiming to own said property, and delivered to the said claimants. In the meantime the debtor was adjudged a bankrupt, and the marshal, under his warrant of bankruptcy, took the property from the claimants and delivered it to the assignee: on affidavits for an order directing the assignee to deliver it back to the said claimants,

*Held*; That there was no conflict between the marshal and the officers of the State courts; that the parties had their remedy by a suit against the marshal or assignee, or by bill in equity, or petition.—*Davidson*, vol. 2, p. 114.

**107. Collaterally Attacking Judgment.**

A judgment cannot be assailed in the Bankrupt Court, but the assignee and creditors must resort to the State court, to test its validity.—*Burns*, vol. 1, p. 174.

**(T.) Stay of Proceedings.****108. Effects of Bankruptcy on Suits Pending in.**

The effect of bankruptcy in suits pending in the State courts is to stay or suspend them. They may, with the leave of the Bankrupt Court, be prosecuted to judgment to ascertain the amount due, but final process to procure satisfaction cannot be issued and executed.—*Allen & Co. v. Montgomery*, vol. 10, p. 503.

**(U.) Supplementary Proceedings.****109. Examination of Bankrupt not Prevented by Injunction.**

The Bankrupt Act does not contemplate a stay of proceedings by injunction on an order to show cause issued out of a State court, why the bankrupt should not be punished for contempt for his failure to appear for examination on proceedings supplementary to execution.—*In re Hill*, vol. 2, p. 140.

(V.) *Withdrawing Cases.***110. Bankrupt Court Cannot from State Court.**

The District Court has no authority to withdraw these cases from the State court, and proceed to their trial here. Congress has not provided that such cases shall be transferred to the District Court, much less has it provided that the District Court may proceed to determine the subject-matter of suits pending in the State courts by issue framed here, to be.—*Clark v. Burton*, vol. 4, p. 2.

**CREDITORS.**

See AGREEMENT,  
BOND,  
DISCHARGE,  
DIVIDEND,  
EXAMINATION,  
INTERVENING CRED-  
ITOR,  
MEETINGS,  
MUTUAL DEBT,  
PARTNERSHIP,  
PETITIONING CRED-  
ITOR,  
PRIORITY,  
PROOF OF DEBT,  
SECURED CREDITOR,  
VOTE.

**1. Choice of Assignee.**

Creditors who have not proved debts have no voice or vote in choice of an assignee, nor any right to be heard by attorney or otherwise, in opposition to the proceedings in bankruptcy.—*Hill*, vol. 1, p. 16.

**2. Objections to Assignee's Account.**

Creditors are not bound to object to the assignee's account save at a meeting called pursuant to the provisions of the 28th Section of the act.—*In re Abraham B. Clark*, vol. 9, p. 67.

**3. Burden of Proof.**

It is for creditors to show affirmatively that they are a body having a right to the relief invoked.—*Scull*, vol. 10, p. 166.

**4. Bank-Bills, from what Date Allowed Interest.**

The creditors of a bank in bankruptcy, whose estate has paid all the debts proven against it in full, leaving a surplus in the

hands of the assignee, and the evidences of debt filed with the proofs being the bills, or notes of the bank, issued as money, are entitled only to interest on such notes in proof, from the date of the proof and filing of the bills before the Register.—*Wilson & Shober v. Bank of North Carolina*, vol. 10, p. 289.

**5. Contempt.**

A creditor, who had obtained judgment in a State court and issued execution before his debtor was adjudged bankrupt, was restrained from selling the property, after adjudication, by an injunction of the United States Court sitting in bankruptcy. Notwithstanding this injunction, however, he caused the property to be sold by the sheriff.

*Held*, That an attachment for contempt in violating the injunction would lie.—*In re Atkinson*, vol. 7, p. 143.

**6. Corporation.**

Proving a debt and recovering dividends in bankruptcy against a corporation, is no bar to recovering judgment for the balance in a State court.—*The Ansonia Brass and Copper Company v. The New Lamp Chimney Co.*, vol. 10, p. 355.

**7. Liability for Cost.**

Where the assignee in bankruptcy at the instance and request of one creditor, controls the validity of the claim of a second creditor, and the cause is decided adversely to the assignee, the creditor at whose instance the proceedings were instituted will be required to pay all the cost of the proceeding, and the creditor whose claim is thus wrongfully controlled may have execution therefor.—*In re Troy Woolen Co.*, vol. 8, p. 412.

**8. Debts Contracted Prior to 1869.**

The assent of creditors whose debts were contracted prior to January 1, 1869, need not have been obtained prior to the amendment of June 22, 1874.—*Pierson*, vol. 10, p. 193.

**9. Appearing to Oppose Discharge After Return Day Discretionary with Court.**

A creditor has no absolute right to appear and oppose the discharge of a bankrupt after the return day of the order to show cause, though the proceedings may



have been adjourned for other purposes.

But it is within the power of the court to permit opposition to be made at any time before the discharge is granted.

If a creditor who has duly filed specifications of opposition to the bankrupt's discharge is about to withdraw them, there may often be good reason to permit other creditors to carry on the opposition.—*In re S. S. Houghton*, vol. 10, p. 337.

#### 10. Assent Cannot be Withdrawn.

When a creditor has once given his assent in writing to the discharge, and the bankrupt has acted upon it, and other creditors have given theirs, and presumptively been influenced by each other's action in this respect, and the assent of the requisite number is obtained and filed, a creditor has no absolute right on the day fixed for the hearing to withdraw and cancel this assent.—*Brent*, vol. 8, p. 444.

#### 11. What Creditors Must Consent to Discharge.

No assent of any class of creditors is necessary to discharge bankrupt from debts contracted before January 1st, 1869.

The only class of creditors who can oppose discharge of bankrupt, or withhold their assent from such discharge, on the ground that fifty per centum has not been realized, are those whose debts were contracted since January 1st, 1869.

Where there is a majority in number of these creditors and the amounts of value of these debts, filing assent to discharge, *this* is all the assent of creditors required under the act, to be given as a condition precedent to discharge of the bankrupt, where fifty per centum is not realized.

Where the record does not disclose that there is the requisite number of the proper class of creditors filing assent to discharge, but that issue is made in the specifications against discharge, it is not too late, on a hearing of the specifications, to prove the fact in issue, viz., the existence of the proper number of the right class of creditors filing assent.—*In re William H. Pierson*, vol. 10, p. 193.

#### 12. Examination of Bankrupt.

Under Section 22, any creditor claimant may apply for the examination of the bankrupt, whether he shall have proved

his debt or not; while under Section 26, only creditors who have proved their debts may so apply.—*In re James T. Ray*, vol. 1, p. 203.

#### 13. Idem after Previous Examination.

Every creditor has a right under Section 26 of the Bankrupt Act of 1867, to examine the bankrupt on oath as to the matters specified in that Section. The fact that one creditor has examined the bankrupt is no reason for withholding the privilege from another.—*Adams*, vol. 2, p. 373.

#### 14. When Fraudulent Deed Avoided.

It is well settled that where a deed is set aside as void as to existing creditors, all the creditors, prior and subsequent, share in the fund, *pro rata*.—*Kehr et al. v. Smith et al.*, vol. 10, p. 49.

#### 15. Homestead.

The declaration of the homestead is not to be held operative to prevent creditors from converting the homestead into a fund for their benefit, when such declaration is made in fraud of their rights as creditors of the bankrupt.—*In re Wm. Henkel*, vol. 2, p. 546.

#### 16. Intervention, Right of.

The construction of Section 42 of the Bankrupt Act contemplates that the petitioning creditor, abandoning the proceeding, may not appear, or may not proceed with the prosecution, and in either event any other creditor may intervene, and on his application the court may proceed to an adjudication. This right of intervention it is not in the power of the petitioning creditor or of the bankrupt to cut off or defeat by any arrangement between themselves, and any action of the court which prevents or defeats such right of intervention is erroneous and in violation of the statute.

If, in the taking of proofs, or for the trial by jury, or for the requisite consideration of the court, postponement becomes necessary, the proceeding is, nevertheless, a proceeding as of the return day, and for all purposes affecting the right of other creditors to intervene should be so regarded.

The words "such petition" in the 42d Section of the said Act, refer to the prior part of that Section, and also to the two preceding Sections, and mean the petition

of the original petitioning creditor and not the petition of the creditor who seeks to intervene.—*In re Lacey Downs & Co.*, vol. 10, p. 477.

### 17. Judgment Creditor.

A creditor who has obtained judgment is not a necessary party in a suit between the assignee in bankruptcy and a subsequent judgment creditor. — *Traders' National Bank of Chicago v. Campbell*, vol. 6, p. 353.

### 18. Lien by Creditor's Bill.

The lien acquired by the commencement of a creditor's suit to reach equitable interests and things in action should not be regarded as attaching by the mere commencement of the suit, but only when judgment is obtained.—*Stewart v. Isidor et al.*, vol. 1, p. 485.

### 19. Barred by Statute of Limitation.

On a petition for a compulsory decree adjudging the respondent a bankrupt, the latter may deny that the petitioner is his creditor, may maintain such denial, overcome the *prima facie* proofs given by the petitioner, and the court must in that case dismiss the petition.

One who holds a claim which is barred by the statutes of limitation of the State in which he and the alleged debtor reside, cannot maintain a petition for an adjudication declaring such debtor a bankrupt.—*In re Cornwall*, vol. 6, p. 305.

### 20. Creditor at Large.

A creditor at large cannot reach equitable assets of his debtor in a court of equity, neither can he assail a conveyance of the debtor's property fraudulently made as to him.

A creditor will not be allowed, pending the administration of an insolvent's estate in the Bankrupt Court, to appropriate property of the bankrupt exclusively to his debt. According to the spirit and equity of Section 14 of the Bankrupt Act of 1867, the property of the bankrupt vests in the assignee for the benefit of the creditors, and he has the same remedies that they would have had (had there been no bankruptcy proceedings) to reach and subject it to the payment of the debts of the estate.—*Allen & Co. v. Montgomery*, vol. 10, p. 503.

### 21. Majority, Control of.

It is not the intention of the 43d Section of the Bankrupt Act of 1867, that the will of three-fourths in value of the creditors whose claims have been proved, is to control those creditors who do not vote in favor of a resolution passed under that section, unless the court sees that the interests of the latter will be promoted by carrying the resolutions into effect.—*In re T. H. Vetterlein et al.*, vol. 6, p. 518.

### 22. Notice to.

Every creditor is entitled to notice of the proceedings in bankruptcy. A notice not addressed to a creditor by his name, is no notice at all.

The error may be cured by issuing and serving a new and correct notice.—*Anonymous*, vol. 1, p. 122.

### 23. Partnership.

A and B were copartners in trade, but A owned most all of the property put into the firm in his own individual right, and at the time of the formation of the partnership was in debt to some extent. This property was all he was worth, and his individual debts were contracted on the strength of this property. The firm carried on business several years, when the bulk of the copartnership property was sold out under a deed of trust given by the firm to secure firm-indebtedness, but no formal dissolution took place. A short time afterwards A filed his voluntary petition in bankruptcy; at this time the copartnership assets consisted of some personal property and a few outstanding accounts from which the assignee realized nothing.

*Held*, That the individual and co-partnership creditors should share equally.—*In re Goedde & Co.*, vol. 6, p. 295.

### 24. Idem, and Individual not Compelled to Elect.

A petition was filed by the assignee of a bankrupt firm, showing that a certain creditor, who held notes signed by the firm and by an individual member thereof, had proved his claim against the firm estate and also against that of the individual partner, the petitioner praying that such creditor might be compelled to elect the estate from which he will receive his dividend.

*Held*, That the creditor was entitled to

the advantage gained by his caution and diligence, and could receive dividends from both estates.—*Emery et al., Assignees, v. Canal National Bank*, vol. 7, p. 217.

**25. Dissolution Copartnership does not affect Rights of.**

A partnership dissolved by mutual consent can have no effect upon the rights of creditors then existing, nor upon those who subsequently became creditors, if the members of the firm continued to treat each other in point of fact as partners after the alleged dissolution, and to act as such in their business transactions with others.—*In re H. C. McFarland & Co.*, vol. 10, p. 381.

**26. Proving Debt.**

A creditor offering to prove a debt against a bankrupt estate, stands in the position of a plaintiff at law.—*Prescott*, vol. 9, p. 385.

**27. Idem. To be heard in Bankruptcy Proceedings.**

Rights of creditors who have proved their debts.—Non-proving creditors entitled to balance after paying debts proved.

A creditor ought not to be heard until he has proved his claim, and he has no right to be heard in any other character than that of a creditor.—*Brisco*, vol. 2, p. 226.

**28. Idem. Submits Himself to Jurisdiction.**

When a creditor presents his claim for probate, he at once subjects himself and his claim to the power and jurisdiction of the court, and becomes subject to its orders within the provisions of the Bankrupt Act; among which is the provision that the court may examine such creditor concerning the debt sought to be proved. He is, therefore, so examined as a party to the proceedings, and is in no sense a "witness."—*In re S. Paddock*, vol. 6, p. 396.

**29. Proportion to File Petition. Withdrawal from.**

Creditors who have united with the original petitioning creditor, under the requirement of the recent amendment, cannot be allowed to withdraw from the petition and have the proceedings dismissed as to them and thus break up the quorum, after they have united in good faith for the purpose

of having their debtor adjudged a bankrupt.

If *all* the creditors of a debtor express a desire to dismiss the proceedings, they should, as a rule, be allowed to do so.

Creditors who have been misled by false representations should be allowed to withdraw on discovery of the truth, if the court is satisfied that they were misled.—*In re P. H. Heffron*, vol. 10, p. 213.

**30. Idem.**

In determining whether the requisite proportion of creditors have joined in the petition, such creditors only should be reckoned whose provable debts exceed \$250. And if the petitioning creditors whose provable debts exceed the sum aforesaid, constitute one-fourth in number of the creditors holding provable debts exceeding said sum, the requirement as to the number of the petitioning creditors is satisfied.

Where the petition is filed on behalf of creditors holding provable debts exceeding the sum of two hundred and fifty dollars, to ascertain whether the amount of the provable debts held by them is equal to one-third in amount, only the provable debts of creditors which exceed two hundred and fifty dollars must be reckoned. And the requirement of the statute is satisfied, if the provable debts due to such petitioning creditors equal one-third of the provable debts due to creditors holding provable debts exceeding the sum of two hundred and fifty dollars. And it is not necessary that the amount of the provable debts of the petitioning creditors should be equal to one-third of *all* the provable debts. *Hymes*, vol. 10, p. 433.

**31. Specific Claims.**

A creditor whose claim consists of notes and drafts for which he had no security, and also for a debt secured by two mortgages, can be admitted as a creditor only for that part of his claim which is unsecured, and the indebtedness for which he has security must rest in abeyance until the value of the securities is ascertained in the manner provided for in the 20th Section of the Bankrupt Act.—*In re Hanna*, vol. 7, p. 502.

**32. Suing in State Court.**

A creditor in a State court from and after the filing of a petition in bankruptcy, ac-

quires no rights which a decree in bankruptcy would not annul.—*Smith, etc., v. Buchanan et al.*, vol. 4, p. 397.

### 33. Surrender of Preference by Trustee.

Where the trustee of an illegally preferred creditor surrenders the trust property to the assignee, without suit, the preferred creditor may prove his debt.—*In re Clark et al.*, vol. 10, p. 21.

### 34. Part Payment to.

The receipt by a creditor of part of his claim does not preclude him from petitioning to have his debtor adjudged a bankrupt if the creditor offers to bring this payment into the registry of the court.—*In re Mercer*, vol. 6, p. 351.

## CRIMINAL PROCEEDINGS.

See MISDEMEANOR.

### Obtaining Goods on Credit, with Intent to Defraud.

The liability of a bankrupt to criminal prosecution in the courts of the United States, under Section 44 of the Bankrupt Act of 1867, for obtaining goods on credit, with intent to defraud, and under false color and pretense of dealing in the ordinary course of trade, within three months before the beginning of the proceedings in bankruptcy, does not exclude the courts of the Commonwealth from jurisdiction of him and others for conspiring to obtain the goods by the false pretense, under Gen. Sts., C. 161, Section 54, and St. of 1863, C. 248, Section 2.

It is no defense to an indictment that the facts in proof show that the defendant committed an offense of a higher degree than that charged.—*Commonwealth, v. Andrew J. Walker et al.*, vol. 4, p. 672.

## CUSTODY OF PROPERTY.

See BANKRUPT,  
DISCHARGE,  
PROPERTY,  
REGISTER,  
SURRENDER.

### 1. Personal Property Fraudulently Conveyed.

In cases of fraud the court may assume the custody of personal property in the

hands of the vendee of the bankrupt, purchased before the vendor is adjudged a bankrupt.—*Hunt*, vol. 2, p. 540.

### 2. Bankrupt Court has.

After the commencement of the proceedings in bankruptcy, all the property and assets of the bankrupt are *in custodia legis*, within the control of the Bankrupt Court only, and no other tribunal can interfere with its process.—*Davis v. Anderson et al.*, vol. 6, p. 145.

### 3. Idem.

The possession of the bankrupt, after petition filed, is the possession of the Bankrupt Court, and any interference therewith, except by leave of that court, is in contempt of its authority.—*In re Enoch Steadman*, vol. 8, p. 819.

### 4. Idem.

All bankrupt's property is instantly placed in the custody of the court by the filing of the petition.—*Phelps v. Selleck*, vol. 8, p. 390.

### 5. Surrender by Bankrupt.—Marshal.

In involuntary cases in bankruptcy, the bankrupt is not authorized to surrender his property to the Register, nor is the Register authorized to receive it.

In voluntary cases, the bankrupt may surrender and the Register receive the property of the bankrupt.

In involuntary cases the marshal alone is authorized, as messenger, to seize and retain the custody of the bankrupt's property until the assignee is appointed.—*Howes & Macy*, vol. 9, p. 423.

### 6. Liability of Assignee.

For care and custody of property from the date of proceedings in bankruptcy to the taking possession thereof by the messenger or assignee, the assignee is accountable, as for expenses of like kind incurred by him after his appointment, having regard, of course, to their necessity and utility, and the reasonableness or exorbitancy of the charges therefor.—*Gardner v. Cook*, vol. 7, p. 346.

## DAMAGES.

See ASSESSMENT,  
SET-OFF,  
UNLIQUIDATED DAMAGES.

## 1. Proof of.

A creditor not on the bankrupt's schedules filed a deposition setting forth a claim of unliquidated damages on a breach of contract by the bankrupt, but made no application for assessment of alleged damages,

*Held*, Such debt was not duly proved.—*In re Clough*, vol. 2, p. 151.

## 2. Loss of Seasonable Market.

Where the claim for damages by reason of the detention and loss of a seasonable market for the goods is not sustained by the evidence, same will not be allowed.—*In re Feeny*, vol. 4, p. 233.

## 3. Conversion of Personal Property.

A claim for damages for wrongful conversion of personal property is provable under the 19th Section of the Bankrupt Act of 1867, and a discharge would release the bankrupt from such a claim.—*Cole v. Roach*, vol. 10, p. 288.

## DEATH OF BANKRUPT.

See DISCHARGE.

## 1. After filing Petition, no Discharge.

Where a bankrupt died five months after filing petition, and his attorney asks for discharge on account of said death,

*Held*, That as the bankrupt had not taken the necessary oath in the 29th Section prior to his decease, and the same being necessary to the granting of a discharge, that it could not be given.—*In re Gunike, a deceased bankrupt*, vol. 4, p. 92.

## 2. Prior to Adjudication Abates Proceedings.

Where a debtor dies between the time of the serving of the rule to show cause and his adjudication as a bankrupt, the proceedings will be abated.—*Frazier & Fry v. McDonald*, vol. 8, p. 237.

## 3. After Adjudication and Before issue of Warrant.

So far as may be necessary to prevent a discontinuance of proceedings in bankruptcy, by the death of the bankrupt, as provided in the 12th Section of the Act,

the warrant is, in the view of the law, issued *eo instanti* with the entering of the order of adjudication, though it should not be physically issued for a month thereafter.

A proceeding in bankruptcy will not be discontinued by the death of the bankrupt between the time of entry of the order of adjudication and the physical "issuing of the warrant."—*In re E. C. Litchfield*, vol. 9, p. 506.

## DEBT.

See AMOUNT DUE,  
ASSIGNEE,  
CLAIM,  
COLLECTION OF DEBTS,  
COMPOSITION,  
COMPROMISE,  
CREDITOR,  
DISCHARGE,  
INTEREST,  
MUTUAL DEBTS,  
PROVABLE DEBT,  
SET OFF,  
UNITED STATES.

## 1. Arrest.

A bankrupt is not liable to arrest, pending proceedings in bankruptcy, upon a claim that would be discharged by an adjudication of bankruptcy.—*Kemball*, vol. 2, p. 204.

## 2. Running Accounts.

An open running account for merchandise sold, consisting of various items of charges and credits at different times, on which was credited the amount at which property was purchased by way of fraudulent preference, leaving a balance which was proved up before the Register against the bankrupt's estate, was held, *prima facie*, to be but a single debt or claim.—*In re Richter's estate*, vol. 4, p. 221.

## 3. Banker's Obligation not Fiduciary.

The obligation incurred by a banker, in the ordinary course of his business as such, with his customers, is not fiduciary in its nature, but the liability is only that of an ordinary debtor.—*In re Bank of Madison*, vol. 9, p. 184.

## 4. After Fraudulent Composition.

Creditors who have received more than the amount stipulated in the composition deed without the knowledge of the other



creditors, are not thereby barred from bringing an action against the debtor on their original obligation when such action is brought on the ground that the composition deed was fraudulently procured.—*Elfeit et al. v. Snow et al.*, vol. 6, p. 57.

#### 5. Contingent Liabilities.

Contingent debts and liabilities specified in Section 19 cannot be regarded as liabilities of a principal debtor within the 33d Section, until they have become fixed liabilities, other than in contradistinction to contingent.—*In re Loder*, vol. 4, p. 190.

#### 6. Corporation—Residue of Debt.

Proving a debt and recovering dividends in bankruptcy against a corporation, is no bar to recovering judgment for the balance in a State court.—*Ansonia Brass and Copper Co. v. New Lamp Chimney Co.*, vol. 10, p. 355.

#### 7. Extinguishment of.

A debt, to be provable in bankruptcy, must continue to exist in the same condition after as at the time of proceedings commenced.

Where a protested note, on which the bankrupt was principal, held by a bank that had discounted it, was taken up by a new note made by the same parties, and accepted by the bank, after adjudication of bankruptcy,

*Held*, The original debt was thereby extinguished, and the liability ceased to be a claim on the estate. Proof of claim based thereon stricken out.—*Montgomery*, vol. 3, p. 426.

#### 8. Failure to Obtain Discharge Revives Former Remedies

Proving a debt in bankruptcy does not of itself operate as an absolute extinguishment or satisfaction of the debt. If the bankrupt's discharge is refused, the creditor who has proved his debt is remitted to his former rights and remedies.—*Dingee v. Becker*, vol. 9, p. 508.

#### 9. Holder of Note—Indorser.

Where the holder of a note receives part of the amount of the same from the indorser, he is entitled to prove for the whole amount against the estate of the bankrupt maker, and holds any surplus he may receive over and above the amount of the

note in trust for the indorser.—*In re Ellerhorst & Co.*, vol. 5, p. 144.

#### 10. Fraudulent Creation of Debt.

Evidence of fraud in the creation of a debt sought to be introduced by a creditor is inadmissible in proceedings in bankruptcy.—*In re Darius Tallman*, vol. 1, p. 462.

#### 11. Fine, Judgment for.

A judgment for a fine imposed as a penalty for crime is not a debt within the meaning of the Bankrupt Act, and not being included in the special provisions, allowing certain claims to be proved as debts, it cannot be proved against the estate of a bankrupt.—*Sutherland*, vol. 3, p. 314.

#### 12. Insurance Premiums.

Where the policies in an insurance company are terminated, the insured do not become creditors of the company for the unearned premium, so that payment to them of such premiums constituted such a preference as will support a petition for an adjudication in bankruptcy.—*Knickerbocker v. Comstock*, vol. 9, p. 484.

#### 13. Merged in Judgment.

A debt is not so merged in the judgment as to deprive the creditor of the right to prove it.—*Brown*, vol. 3, p. 584.

#### 14. Idem. Affected by Fraud.

Where the ground of a complaint is the fraud in creating a debt, judgment thereon does not merge the original indebtedness so as to free it from taint of fraud, or to permit it to be discharged in bankruptcy; but where the original debt arises in contract, and the fraud is but an incident on the debt and not its creative power, in such case the debt will be merged in judgment and the bankrupt discharged therefrom, where such judgment was obtained prior to the filing of the petition in bankruptcy.—*Shuman v. Strauss*, vol. 10, p. 300.

#### 15. Idem. To the United States.

When the United States elect to take judgment upon a bond they part with all right to prove it as a debt due and payable from the bankrupt at the time of the adjudication of bankruptcy, and as a debt to be proved against the estate, the debt not being affected by the discharge.—*A. S. Mansfield*, vol. 6, p. 388.



**16. Barred by Statutes of Limitation.**

On the question where a debt barred by the statutes of limitation can be proved so as to entitle the holder to share in the estates of the bankrupt, if it be held that such debt cannot be allowed against the estate, it does not follow that the discharges of the bankrupt will not be a defense thereto if the bankrupt is sued thereon in another State.—*In re Cornwall*, vol. 6, p. 305.

**17. Merger.**

Debts due by a firm were purchased by a third party, partly by giving his notes indorsed by the firm. The indorsed notes were not all paid. One of the firm (it having been dissolved) files his petition in bankruptcy, and does not file the assent of any of the creditors to whom this firm is debtor on the indorsements, although he has no estate. Objections are made that the bankrupt is liable in respect of these indorsements as principal debtor, and must, under the 83d Section, procure the assent of a majority as therein provided. That in indorsing these notes he was contracting to pay his own debt, and in any event by protest and notice became principal debtor.

*Held*, The taking of the notes so indorsed extinguished the original indebtedness.—*Loder*, vol. 4, p. 190.

**18. Mortgagee in Possession.**

The taking possession of a vessel by the mortgagee, and his omission to sell her within a reasonable time, operates as a satisfaction of the debt for which she was mortgaged, to the extent of her value when the mortgagee took possession.—*J. C. Haake*, vol. 7, p. 61.

**19. New Promise—Action on.**

Where a debt discharged in bankruptcy is revived by a new promise, the original debt should be set out as the cause of action and the new promise replied, when the plea of discharge in bankruptcy is filed.—*Benjamin G. Dusenbury, Executor, etc., Appellant, v. Mark Hoyet, Respondent*, vol. 10, p. 313.

**20. Partnership.**

A joint request made by the individual members of a firm soliciting B. to become a surety of one of them in an administra-

tion bond, does not create a liability of the firm. Hence upon the firm being subsequently declared bankrupt, B. has no debt due therefrom, which is recoverable at law.—*Forsyth v. Woods, Assignee, etc.*, vol. 5, p. 78.

**21. Between two Firms—Where one Co-partner was Member of Both.**

B. & G. were, at the time of their bankruptcy, indebted to the firms of G. & F. G. was a member of both firms; F. was not a member of the bankrupt firm, and he offered to prove the debt of his firm as the remaining or surviving partner, having the right to wind up its affairs.

*Held*, That the debt should be admitted to proof.—*In re Buckhause & Gough, ex parte C. L. Flynn*, vol. 10, p. 206.

**22. Of Petitioning Creditor Undue.**

It is not essential that the debt of the petitioning creditor should be *due* at the date of the alleged act of bankruptcy, to enable him to sustain proceedings against the bankrupt.—*Phelps v. Clasen*, vol. 8, p. 87.

**23. Idem, Validity of.**

While an adjudication in bankruptcy stands unrevoked, all inquiry into the validity of the debt of the petitioning creditor in the involuntary proceeding is precluded.—*Re James W. Fallon*, vol. 2, p. 277.

**24. Sale of Intoxicating Liquors.**

That portion of the law of Maine relative to the sale of intoxicating liquors, which debar a creditor from maintaining a suit for liquors purchased without the State, with intent to sell the same in violation of the provisions of said act, does not prevent proof of such claim in bankruptcy against the estate of a bankrupt residing in said State, if such contract is valid at the place where made.—*Murray*, vol. 3, p. 765.

**25. Idem, in Michigan.**

A debt contracted in whole or in part for spirituous liquors, being in violation of the laws of Michigan must be rejected, and the name of the claimant stricken from the list of creditors of the estate of the bankrupt. Claimant ordered to pay the costs and an attorney's fee of ten dollars.—*In re Paddock*, vol. 6, p. 132.

**26. Set-off.**

A debt of one insolvent, purchased by his debtor immediately prior to the filing of a petition in bankruptcy, and *purchased in order to set the same off against his indebtedness, is protected by the Bankrupt Act*, it only forbidding the set-off of claims *purchased after petition filed*.—*Hovey et al. v. Home Insurance Co.*, vol. 10, p. 224.

**27. Slave Notes.**

Creditor upon a note, of which slaves were part consideration, filed petition in involuntary bankruptcy against a farmer, charging him with having made fraudulent preferences, being insolvent.

*Held*, A note made prior to the Emancipation Proclamation, of which slaves were a consideration, is valid, and the debt will support a petition of creditor in bankruptcy.—*Miller v. Keys*, vol. 3, p. 225.

**28. Leave to Bring Suit—Statute of Limitations.**

Application for leave to commence a suit against the bankrupt will be entertained and leave granted to begin an action for a debt to which the bankrupt's discharge would not be a bar, if it appears that if not commenced forthwith the Statute of Limitations might run against it, or that service might not be obtained upon the bankrupt afterwards, or that testimony might be lost; and the court will then stay the suit to await the determination of the question of the debtor's discharge or the expiration of a reasonable time to make application therefor. But where no such reasons are offered for leave to commence a suit, the court will deny an application therefor.—*In re Ghirardelli*, vol. 4, p. 164.

**29. Time of Contracting.**

A tenant on the 1st day of May, 1868, surrendered his lease, which had another year to run, under a bargain that the landlord should rent the premises for the remainder of the term for what he might be able to get for them, and apply the rent to the credit of the tenant, and that the tenant should pay to the landlord such sum as the rent so received by him, subsequent to such surrender, should fall short of the rent reserved in the lease so surrendered, with interest on quarterly deficits from the close of each quarter respectively. At the end of the year a considerable amount hav-

ing so become due, the landlord recovered a judgment therefor. After the recovery of this judgment the bankrupt filed his petition in bankruptcy.

*Held*, That the claim was contracted prior to January 1st, 1869, to wit: on the day of surrendering the lease and entering into the contract to pay the deficiency of rent.—*In re S. G. Swift*, vol. 7, p. 591.

**30. Idem—Renewals.**

For a debt contracted in 1863, a note was given at twelve months, and each year thereafter, until 1870, the old note was taken up and a new note given—the last note given in 1870.

*Held*, That this was not a debt contracted prior to January 1st, 1869, but comes under the fifty per cent. clause.—*In re Schumpert*, vol. 8, p. 415.

**31. Idem—Surety.**

Where A, after January, 1869, pays a judgment rendered against him as surety of B, on a note given prior to 1869, the debt to him by B thereby created is "*contracted*" after January 1, 1869, within the meaning of the 33d Section of the Act.—*Parish*, vol. 9, p. 578.

**32. Undue.**

Involuntary proceedings may be instituted against a debtor, although the debt is not yet due, if it is a provable debt.—*W. B. & J. F. Alexander*, vol. 4, p. 178.

**33. Wagering Contract.**

A speculative option where the object of the parties is not a sale and delivery of the goods, but a settlement in money on differences—commonly called a "*put*,"—is a wagering contract and void, either as within the statutes against gambling, or as against public policy, and is not a provable debt in bankruptcy.—*Chandler*, vol. 9, p. 514.

## DEED.

See CORPORATION.

**1. Execution.**

A corporation cannot execute a deed otherwise than under its seal. A lien by way of mortgage can only be created by a deed under seal.

A corporation cannot make a deed unless the directors, or a majority of them, meet together as a Board, and so determine.—*St. Helens Mill Co.*, vol. 10, p. 415.

**2. Not Recorded until within Four Months.**

A deed of trust made by a bankrupt more than four months prior to the commencement of proceedings in bankruptcy, which, by the law of the State where made, is valid between the grantor and grantee and against subsequent purchasers with actual notice, without being recorded, cannot be avoided by the assignee in bankruptcy, under Section 35, because not recorded until within four months prior to the commencement of the proceedings in bankruptcy.

*Aliter*, If by the law of the State where executed the recording is a condition precedent to its validity.—*Seaver v. Spink*, vol. 8, p. 218.

**3. Sale under Deed of Trust.**

A sale of land, after proceedings commenced in bankruptcy against the debtor, under a deed of trust executed prior to said bankruptcy, is not void, but only voidable.—*McGready v. Harris*, vol. 9, p. 135.

DEFAULT.

See ANSWER.

JURY TRIAL,

ORDER TO SHOW CAUSE,  
SERVICE PAPERS.

**1. Motion to Open in order to Plead Statutory Penalty.**

A bankrupt moved to set aside his default for not appearing on the return day of the order to show cause why he should not be declared a bankrupt, on the ground that the debt of the petitioning creditor was not provable, as it was based wholly upon the sale of intoxicating liquors and therefore void.

*Held*, That the motion comes too late and without any excuse being offered or pretended for the delay; that the defense when made by the debtor himself, founded as it is in a violation of the law, is not to be favored by the courts.—*In re Neilson*, vol. 7, p. 505.

**2. Advances on Contract Terminated by.**

Contract having been terminated solely on account of the default of the purchaser, the seller having been ready to perform on his part, an action would not lie by the purchaser or by his assignee in bankruptcy

to recover back the payments made by him previous to his default.—*Edward E. Kane, Assignee, v. William Jenkinson*, vol. 10, p. 316.

DEFICIENCY.

See ASSIGNEE, CHOICE OF,  
SECURED CREDITOR.

**Under Trust Deed.**

A creditor secured by a deed of trust, caused the property to be sold, and bought in a portion thereof, the residue being sold to third parties, and applied to prove his debt in bankruptcy.

*Held*, That he should so prove it, and he would be allowed the same to an amount, less the value of the property so sold to third parties, to be paid from the proceeds of the sale of the trust property. Any surplus from said sale would form part of the general assets. For any deficiency the secured creditor would become a general creditor to that extent, entitled to share in the general assets.—*Reuhle*, vol. 2, p. 577.

DEFINITIONS.

See COMMERCIAL PAPER,  
CONTEMPLATION OF  
BANKRUPTCY,  
CORPORATION,  
COURT,  
INSOLVENCY,  
MANUFACTURER,  
MARSHAL,  
MESSENGER  
MINOR,  
ORDINARY COURSE OF  
BUSINESS,  
TRADER.

**Since the Passage of this Act.**

The difference explained between the meaning of the following phrases in Section 20th, namely, "since the passage of this act," and "subsequently to the passage of this act."—*In re Isaac Rosenfield*, vol. 1, p. 575.

DELAY.

See PRACTICE.

**1. Filing Petition.**

A delay to file a petition for revision in the Circuit Court, from May 12th, 1869, to June 13th, of the same year, is not unreasonable in the absence of any rule upon

the subject in that court, unless such delay has operated to the prejudice of the opposite party.—*Littlefield v. Delaware & Hudson Canal Co.*, vol. 4, p. 258.

## 2. Application for Discharge.

On application of B. to discharge the order of stay granted against proceedings in State courts, on the ground that there had been unreasonable delay on the part of the bankrupt in endeavoring to obtain his discharge,

*Held*, That there had been unreasonable delay, for the reason that the bankrupt had, on the 17th day of November, 1870, presented his petition to the Circuit Court, to review a decision of the District Court on questions arising in reference to a discharge, returnable on the 19th, with a stay of proceedings on such decision, and there was no evidence to show why he had not, for fourteen months, brought the matter to a hearing.—*In re W. Belden*, vol. 6, p. 443.

## 3. Idem for Homestead.

The right to the homestead exemption is not lost by the *delay* of the husband to claim it until an order is applied for by the assignee in bankruptcy to sell the property for the benefit of the estate.—*Bartholomew, Assignee, v. West et al.*, vol. 8, p. 12.

## 4. A Particular Creditor.

The giving of a note by a debtor, and causing it to be sued for the purpose of preventing an attachment by a creditor, is an act which has a direct and necessary tendency to defeat and delay creditors generally, though it is aimed against one only.—*Williams v. Williams*, vol. 3, p. 286.

## DEMAND.

See PRACTICE.

## Demand of Payment.

The allegation of stoppage and suspension of payment on a certain day, upon commercial paper which was made and dated within the six months next preceding the actual filing of the petition, connected with the allegation that payment of the commercial paper (a due bill) had been demanded at different times, and that the respondent had failed to make such payment, was equivalent to an allegation of a demand for payment on that day.—*In re Chappel*, vol. 4, p. 540.

## DEMURRER.

## DEMURRER.

See ANSWER,

PLEADING.

ORDER TO SHOW CAUSE.

## 1. Remedy at Law.

A demurrer to a bill in equity brought by the assignee, on the ground that complainant had a complete remedy at law, will be overruled where the facts show that questions of fraud, trust and partnership are all involved in the case at issue.—*Taylor v. Rusch & Bernart*, vol. 5, p. 399.

## 2. Petition for Review.

When the petition for review under the rules in the sixth Circuit is demurred to, its statements, like those of any other pleading, will be taken as true and the appeal determined upon its averments. If the facts therein are sufficient, the demurrer will be overruled and the decree below reversed.—*Curran et al. v. Munger et al.*, vol. 6, p. 83.

## 3. Purely Technical Objections.

The United States Circuit Court cannot notice objections taken on merely technical grounds where no demurrer was filed in the District Court, for the reason that the 22d Section of the judiciary act forbids such notice except in cases of demurrer.—*Babbitt, assignee, v. Burgess*, vol. 7, p. 561.

## 4. Waives Right to Jury Trial.

The respondent having elected to demur on the return day, has waived the right, given him under Section 41, to file a general denial and demand a jury trial.

It is discretionary with the court, on overruling the demurrer, to thereupon adjudge the debtor a bankrupt or to allow him to answer over on terms.

In this case respondent's demand for trial by jury was refused; but he was allowed to file a general denial referable instante to the Register to take proof.—*In re Benham*, vol. 8, p. 94.

## 5. To an Answer Denying Validity of Bankruptcy Proceedings.

An assignee in bankruptcy brought an action to recover certain real estate, averring title in himself by virtue of the bankruptcy proceedings, and annexed as exhibits certain portions of the proceedings.

The defendant, by answer, sets up title in himself, derived from the bankrupt after the commencement of bankruptcy proceedings, and denies that the Bankrupt Court had jurisdiction of the bankrupt or his property. The plaintiff demurred to the answer, declining to plead further, and, standing upon his demurrer, judgment was rendered against him in the Court below.

*Held*, That the demurrer to the answer was properly overruled, for the reason that the answer amounted to a denial of the validity of the bankruptcy proceedings, and the defendants cannot be denied the right to establish, by competent evidence, that the bankruptcy proceedings are void.—*Stuart, assignee, v. Aumuller et al.*, vol. 8, p. 541.

## DENIAL OF BANKRUPTCY.

See ADJOURNMENT,  
JURY TRIAL,  
ORDER TO SHOW CAUSE,  
PLEADING.

### 1. Preliminary Injunction not Dissolved thereby.

Creditors petitioned to have co-partnership debtors adjudged bankrupts on the ground that they had made preferential assignments, and confessed judgment to other creditors. Debtors made denial, and demanded jury trials, which were ordered. Injunction had issued at the instance of one of the creditors restraining proceedings under the assignment, and upon said judgments. On motion to vacate said injunction,

*Held*, It would not be dissolved until the question of bankruptcy of the debtors should be determined.—*In re Henry F. Metzler & Thomas G. Cowperthwaite*, vol. 1, p. 38.

### 2. Of Conclusion of Law.

The denial of a debtor, in his answer to a petition of bankruptcy filed against him, is not sufficient to prevent adjudication when it admits the confession of a judgment, although it denies that there was a fraudulent intent to give a fraudulent preference; for such negative allegation implies that the judgment was conferred with in-

tent to give a preference, although not a fraudulent one.—*In re Sutherland*, vol. 1, p. 531.

### 3. General Issue.

An answer to petition of creditors denying the commission of acts of bankruptcy, and averring that they should not be declared bankrupts for any cause alleged in the petition, amounts to a general issue, and no replication is necessary.—*In re Marshal Dunham and Joseph Orr*, vol. 2, p. 17.

### 4. Of Acts of Bankruptcy though Insolvency Admitted.

When all the allegations of the petitioning creditors' petition are denied by the answer and amended answer, with the exception of the allegation of insolvency, which is admitted by the respondent, as shown by its inability to meet the legal demands of its creditors (depositors), an order of adjudication of bankruptcy will not be made until the acts of bankruptcy alleged, or one of them, shall be sustained by evidence taken upon the issue made by the petition and amended answer.—*In re Safe Deposit and Savings Institution*, vol. 7, p. 393.

### 5. Waived by Demurring on Return Day.

To the rule to show cause why the debtor should not be adjudged bankrupt, respondent appeared on the return day and filed a general demurrer to the petition, and after argument, was overruled as frivolous. Debtor then asked leave to file a general denial, and demand for trial by jury.

*Held*, The respondent having elected to demur on the return day, has waived the right given him under Section 41, to file a general denial.—*In re Benham*, vol. 8, p. 94.

### 6. Not Requisite to be Verified.

Neither the Bankrupt Law nor Form Sixty-one require that the answer to a creditor's petition, to entitle the debtor to demand and have a hearing by the court or a trial by jury, should be verified, or even in writing. It is sufficient if he appear before the court and allege that the facts set forth are not true.



The better practice, however, is to put the whole answer in writing, and allege in express terms that the facts set forth in the petition are not true, and then conclude with a demand for a hearing by the court, or a trial by jury. It should be signed by the respondent in person or by attorney.—*In re Heydette*, vol. 8, p. 882.

#### 7. Idem.

A denial of the alleged acts of bankruptcy need not be sworn to.

A general answer, in substance like Form Sixty-one, is sufficient to make up the issues, whether the petition alleges one or more distinct acts of bankruptcy.

The respondent may answer each allegation specially, and set up new matter by way of avoidance. In such case a replication will be necessary to put in issue such new matter.

Where the petition alleges facts which constitute *a fraud in law*, if the answer admits the facts but denies the fraudulent intent, the part denying the intent will be treated simply as the statement of an erroneous legal conclusion.—*In re Hawkeye Smelting Co.*, vol. 8, p. 885.

#### 8. List of Creditors to accompany since Amendment.

Since the amendment of June 22d, 1874, if the bankrupt denies the act of bankruptcy alleged in the petition and demands a jury trial, he must file a list of his creditors.—*Warren Savings Bank v. Palmer*, vol. 10, p. 289.

### DEPOSIT IN COURT.

#### Prior to Adjudication.

Where money was deposited in court to the credit of a person against whom a warrant for adjudication of bankruptcy had been issued, and the funds had thereby been lodged in court without prejudice to the rights of creditors or of a mortgagee, the legal intendment of such deposit would be that the rights of the assignee on the one side, and of the mortgagee on the other, should be adjudicated according to the law and the usage of the court.—*Masterson*, vol. 4, p. 553.

### DEPOSITIONS.

#### DEPOSITIONS.

See COMMISSIONER,  
COST AND FEES,  
EXAMINATION,  
INVOLUNTARY BANK-  
RUPTCY,  
PLEADING,  
REGISTER,  
WITNESS.

#### 1. In Support of Claims. Debts Due to Residents and Non-residents.

A deposition in support of a claim, is not properly a proof of a debt. Debts due by the bankrupt to resident creditors must be proved before one of the Registers of the court of the home district. Debts due to non-resident creditors, must be proved before any Register or commissioner of the court in any district other than that in which proceedings in bankruptcy are pending. Commissioners of the Circuit Court of the United States are not authorized to take proofs of debts due to creditors residing in districts where proceedings are pending.—*In re Haley*, vol. 2, p. 36.

#### 2. By Notary Publics Prior to Amendment.

A deposition by a creditor is not a deposition as ordinarily understood. It is in the nature of an examination. Notaries have not the judicial power requisite to take legal proof of a claim. They are State officers and responsible alone to them, and a creditor residing in another judicial district cannot make proof of his claim before them.—*In re Strauss*, vol. 2, p. 48.

#### 3. Is in Nature of Examination.

A deposition by a creditor is not a deposition as ordinarily understood. It is in the nature of an examination.—*Strauss*, vol. 2, p. 48.

#### 4. Signing.

If neither the petition nor the deposition of the act of bankruptcy are signed by the petitioner, the defect is fatal.—*Hunt, Tillinghast & Co. v. Pook & Steers*, vol. 5, p. 161.

#### 5. Authority of Register.

Although a Register may have no authority to take a particular deposition, he



has full authority to administer oaths, and when by the assent of parties he has taken such a deposition to be used in evidence in a cause, the same becomes a sworn statement made in the case to be used as evidence therein, to which the party causing the deposition to be so taken cannot object.—*Lawrence v. Graves*, vol. 5, p. 279.

## DIFFERENT DISTRICTS.

See ASSIGNEE,  
COMMENCEMENT OF PROCEEDINGS,  
COURTS,  
PRACTICE,  
STAY OF PROCEEDINGS,

### 1. Co-partners Filing Petition.

Where one partner residing in New York City, petitioned individually, and was adjudged bankrupt, and two other partners residing in Cincinnati, Ohio, petitioned, as co-partners, to be allowed to join in the application of the first, and file their petitions in the same district,

*Held*, That the court had no jurisdiction to grant such leave, as the single partner had petitioned as an individual debtor for an individual discharge.—*In re Julius A. Boylan*, vol. 1, p. 2.

### 2. Habeas Corpus.

Rule 27 G. O. only applies to the court in which bankruptcy proceedings are pending.—*In re James W. Seymour*, vol. 1, p. 29.

### 3. Partners Residing in.

A petition was filed by two partners, one of whom neither resided nor carried on business in the district where the petition was filed.

*Held*, That such partner must file his petition where he resided. It appearing further, that a third party had been a partner at the time the partnership debts were contracted, and that the members thereof were bankrupt jointly and individually, the court intimated that no proceedings could be had in the other petition or petitions until the third partner joined.—*In re Francis T. Prankard & William C. Prankard*, vol. 1, p. 297.

### 4. Idem.

Where one member of a firm files his petition in one State and requests his co-partners to join him in the proceedings, which they refuse to do, but subsequently appear by attorney and consent to an adjudication, whereupon all the members of the firm are adjudicated bankrupt, and upon the application for the discharge of the bankrupts, specifications were filed in opposition to their discharge on the ground of want of jurisdiction.

*Held*, That Section 36, taken in connection with Section 11, supplemented by General Order XVIII., should be construed together. Section 36 provides that "if such copartners (that is, copartners in trade, who are sought to be adjudged bankrupts on the petition of themselves, or any one of them, or any creditor of theirs) reside in different districts, that court in which the petition is first filed shall retain exclusive jurisdiction over the case." The court which first obtains jurisdiction over the subject-matter of the petition, and over the person of the petitioner, shall have exclusive jurisdiction over the case; that is, over the subject matter of the petition, and over all the copartners if the non-petitioning copartners be brought in by appropriate process. Objections to jurisdiction overruled.—*In re Penn et al.*, vol. 5, p. 30.

### 5. Pendency of Proceedings in Another District.

Where a plea in abatement sets up that the writ, issued in an assumpsit by assignee to recover money paid by bankrupt by way of preference, does not show jurisdiction, and that in point of fact there is none, because proceedings in bankruptcy are pending in another district, writ does not allege that any bankruptcy proceedings are pending within this district, but plaintiffs were appointed assignees in the other district,

*Held*, That jurisdiction is only vested in the courts of the district in which bankruptcy proceedings are pending for the adjustment and collecting of matters arising therefrom, and for such suits as this one. The United States District Court of Rhode Island cannot entertain this case because proceedings were begun in the

State of Massachusetts.—*Sherman et al. v. Bingham et al.*, vol. 5, p. 84.

#### 6. Petition First Filed has Precedence.

While proceedings are pending in one district, it is improper to grant an adjudication in another, as the petition first filed takes the precedence.—*Warren Leland & Chas. Leland*, vol. 5, p. 222.

#### 7. Petition First Filed Covers all Assets.

If the same debtor, in substance, is before two courts, the title of the assignees appointed under the petition first filed, would cover all the assets owned by the bankrupt at the time of the filing of that petition, and it would therefore be useless to proceed upon any petition subsequently filed in another district, since there would be no assets left to be reached by it.—*Boston, Hartford & Erie Railroad Co.*, vol. 6, p. 210.

#### 8. Action by Assignee.

An action brought by an assignee in bankruptcy in a District court other than the one in which the proceedings in bankruptcy were pending was dismissed.—*Jobbins v. Montague et al.*, vol. 6, p. 509.

#### 9. Idem.

S. was adjudged a bankrupt by the District Court of the United States for the District of Maine, of which he was a citizen, and P. was appointed his assignee, also residing in the same district. The assignee filed his bill in equity in the same court to recover certain preferences of the respondent, who resided in and was a citizen of Massachusetts, and had no property in this district and was not found here. The subpoena was served on respondent in Massachusetts, who appeared to object to the jurisdiction of this court.

*Held*, That the court did not have jurisdiction to proceed against the respondent.—*Paine, Assignee, v. Caldwell*, vol. 6, p. 558.

#### 10. Idem.

A suit may be maintained by an assignee in bankruptcy to collect the assets of the bankrupt in District courts other than that where the proceedings in bankruptcy are pending.—*Goodall, Assignee, v. Tuttle*, vol. 7, p. 193.

#### 11. Contra

A United States District Court, other than that in which bankruptcy proceedings are pending, has not jurisdiction under which an assignee can commence an action for the recovery of assets, and such a suit will be dismissed for want of jurisdiction.—*Lamb v. Damron*, vol. 7, p. 509.

#### 12. Partnership Residence.

A. filed a petition to have the firm of D. & Co. adjudged bankrupts, alleging as an act of bankruptcy, that two notes executed by the firm at Cincinnati, Ohio, had remained unpaid for more than fourteen days.

The members of the firm pleaded separately to the jurisdiction of the court, alleging that the domicile and only place of business of the firm was in the district of Michigan, and that they had no location, domicile or place of business in the southern district of Ohio. It was proved that one of the partners resided in the southern district of Ohio.

*Held*, That the only court having jurisdiction was the United States District Court of Michigan.—*Cameron v. Canico & Co.*, vol. 9, p. 527.

#### 13. Injunction.

A District court has no power to grant an injunction to stay proceedings in another court by reason of bankruptcy proceedings pending in another State and before another court.—*In re H. A. & J. B. Richardson*, vol. 2, p. 202.

### DISALLOWING CLAIMS.

See ASSIGNEE,  
EXPUNGING PROOF.

#### For Illegality.

This court has jurisdiction to allow or disallow claims against a bankrupt estate, and, therefore, to pass upon their legality; and this, although it may not have jurisdiction to enforce a penalty imposed by the State law on account of an act making any such claim illegal.—*In re Robert Pittock*, vol. 8, p. 78.

## DISCHARGE.

See ACT OF BANKRUPTCY,  
ACCOUNT,  
ASSETS,  
ASSIGNEE,  
BANKRUPT,  
CONCEALMENT,  
CONTEMPLATION OF  
BANKRUPTCY,  
CORPORATION,  
COST AND FEES,  
CREDITORS,  
DEBTS,  
IMPEACHING DIS-  
CHARGE,  
PRACTICE,  
SECURITIES,  
SPECIFICATIONS.

## DISCHARGE—

- I. *Act of Bankruptcy*, p. 349.
- II. *Adjournment*, p. 350.
- III. *Amendment*, p. 350.
- IV. *Application*, p. 350.
- V. *Appearance*, p. 351.
- VI. *Arrest*, p. 351.
- VII. *Assent*, p. 351.
- VIII. *Assets*, p. 352.
- IX. *Assignee*, p. 352.
- X. *Bankrupt, Protection of*, p. 352.
- XI. *Books of Account*, p. 352.
- XII. *Buying, to Sell Again*, p. 353.
- XIII. *Certificate*, p. 353.
- XIV. *Certifying Questions*, p. 353.
- XV. *Concealment*, p. 353.
- XVI. *Contingent Liability*, p. 354.
- XVII. *Continuing Contract*, p. 354.
- XVIII. *Conversion of Personal Property*, p. 354.
- XIX. *Conveyances*, p. 354.
- XX. *Corporation*, p. 354.
- XXI. *Creditor*, p. 354.
- XXII. *Death*, p. 354.
- XXIII. *Deposit*, p. 354.
- XXIV. *Drawee*, p. 355.
- XXV. *Estoppel*, p. 355.
- XXVI. *Examination of Bankrupt*, p. 355.
- XXVII. *Exemption*, p. 355.
- XXVIII. *False Swearing*, p. 355.

XXIX. *Fiduciary Debt*, p. 355.

XXX. *Fifty Per Cent.*, p. 356.

XXXI. *Fraud*, p. 357.

XXXII. *Fraudulent Concealment*, p. 357.

XXXIII. *Fraudulent Debt*, p. 358.

XXXIV. *Fraudulent Payments Prior to Act*, p. 358.

XXXV. *Fraudulent Preference*, p. 358.

XXXVI. *Habeas Corpus*, p. 358.

XXXVII. *Impeaching Discharge*, p. 358.

XXXVIII. *Influencing Proceedings*, p. 359.

XXXIX. *Jurisdiction*, p. 359.

XL. *Notice*, p. 360.

XLI. *Opposition to Discharge*, p. 360.

XLII. *Oath*, p. 362.

XLIII. *Partnership*, p. 362.

XLIV. *Payment*, p. 363.

XLV. *Petition*, p. 363.

XLVI. *Pleading*, p. 363.

XLVII. *Practice*, p. 363.

XLVIII. *Preference*, p. 364.

XLIX. *Property*, p. 364.

L. *Proving Debt*, p. 364.

LI. *Proof of Debt*, p. 364.

LII. *Register*, p. 364.

LIII. *Regularity*, p. 364.

LIV. *Release*, p. 365.

LV. *Residence*, p. 365.

LVI. *Sale*, p. 365.

LVII. *Schedule*, p. 365.

LVIII. *Second Bankruptcy*, p. 365.

LIX. *Specifications*, p. 365.

LX. *Surety*, p. 366.

LXI. *Trustee*, p. 366.

LXII. *Withdrawing Objections*, p. 366.

LXIII. *Wages*, p. 366.

LXIV. *Waste*, p. 366.

LXV. *Wife*, p. 367.

LXVI. *Witness*, p. 367.

I. *Act of Bankruptcy.*1. *Not necessarily Bar.*

Where a person subject to the Bankrupt Law, being insolvent and knowing himself to be such, but not contemplating bankruptcy, pays one creditor in full, there is no conclusive presumption that he has given a fraudulent preference within the mean-

ing of Section 29 of the Bankrupt Act, so as to prevent his discharge, although such payment may be an act of bankruptcy within the meaning of Section 39 of the Act. Section 29 refuses a discharge on the ground of preference only when the Act is brought within the definitions of Section 35 or of Section 29 itself. Under the latter it must be proved that bankruptcy was in contemplation, and, under the former, that the creditor was a party to the fraud.—*In re Worthington S. Locke*, vol. 2, p. 382.

## II. Adjournment.

### 2. On Return Day.

Proceedings on the return day of an order to show cause why the discharge should not be granted, can be adjourned by reason of the adjournment of the examination of the bankrupt.—*In re George S. Mawson*, vol. 1, p. 271.

## III. Amendment.

### 3. Of Specifications.

Incomplete specifications in opposition to a discharge in bankruptcy, may be amended in due course.—*In re Charles H. McIntire*, vol. 1, p. 486.

## IV. Application.

### After One Year.

### 4. Discretion of Court.

When application is made by a bankrupt for his discharge, after the expiration of a year from the adjudication of bankruptcy, it is discretionary with the court to grant or withhold the discharge, according to the circumstances of such case. The discharge after the year not to be granted, as a matter of course; but the bankrupt may be permitted, by affidavit, petition, or otherwise, to explain in writing the causes of the delay.—*Canady*, vol. 3, p. 11.

### 5. Dies non.

A was adjudged a bankrupt, November 26, 1867, and filed his application for a discharge, November 27, 1868.

*Held*, That the case was within the equity and fair construction of Section 48 of the Bankrupt Act of 1867, which provides that when any particular number of days is prescribed, and the last day falls on a Sunday, Christmas Day, or any day appointed by the President of the United States as a day of public thanksgiving, the last day shall be excluded from the computation.

Usual order of notice to creditors allowed to be issued.—*In re J. H. B. Lang*, vol. 2, p. 480.

### 6. Application For, must be Filed within a Year when.

Bankrupt filed a petition for his discharge more than one year after adjudication, setting forth in said petition that no debts had been proved, and no estate had come into the hands of the assignee for distribution. No debts in the case had been proved, and assets to the amount of ten dollars and eighty cents had come into the hands of the assignee.

*Held*, That bankrupt should have filed his petition for discharge within one year after adjudication; and, failing to do so, discharge must be refused.—*In re Schenck*, vol. 5, p. 98.

### 7. Idem. Refused.

Where a bankrupt had failed to apply for a discharge until the expiration of a year from the adjudication in bankruptcy, a discharge must be refused.—*In re Thompson Greenfield*, vol. 2, p. 298.

### 8. Idem.

A bankrupt must make application for his discharge within one year from the date of adjudication in bankruptcy.—*In re Wilmott*, vol. 2, p. 214.

### 9. Idem.

A bankrupt, who had no assets except certain property set apart as exempt, failed to apply for a discharge within a year after adjudication of bankruptcy.

*Held*, That the granting of a discharge was not a right, but a favor conditioned upon the performance of certain requirements of the statute, and the failure to make said application would preclude a discharge.—*In re Martin*, vol. 2, p. 548.

### 10. Cases where Application must be Made within a Year.

Under Section 29, it is only in cases where the bankrupt can apply for his discharge within less than six months from his adjudication, that he must do so within a year therefrom, in order to obtain a discharge.—*In re Thompson Greenfield*, vol. 2, p. 311.

### 11. When no Assets.

When the application for a discharge is made after sixty days, and within six months after adjudication, it is sufficient

for the bankrupt to state in Form 51 that no debts have been proved, or that no assets have come to the assignee, to obtain order to show cause why the discharge should not be granted. Upon the return of such order, the court will grant discharge only on satisfactory evidence of no debts proved, and no assets come to the assignee, which evidence will be the return of the assignee.—*In re Bellamy*, vol. 1, p. 64.

#### 12. Idem.

Bankrupt may apply for a discharge within sixty days after adjudication in bankruptcy where debts have been proved, but no assets have come to the hands of the assignee.—*In re B. W. & J. H. Woolums*, vol. 1, p. 496.

#### 13. Delay in Application.

On the application of B. to discharge the order of stay, granted against proceedings in State court, on the ground that there had been unreasonable delay on the part of the bankrupt in endeavoring to obtain his discharge,

*Held*, That there had been unreasonable delay, for the reason that the bankrupt had, on the 17th day of November, 1870, presented his petition to the Circuit Court, to review a decision of the District Court, on questions arising in reference to a discharge, returnable on the 19th, with a stay of proceedings on such decision, and there was no evidence to show why he had not, for fourteen months, brought the matter to a hearing.—*In re W. Belden*, vol. 6. p. 443.

#### 14. Where Debts are Proved and there are Assets.

Where debts are proved and there are assets, application for a discharge cannot be filed before the expiration of six months from the issue of the warrant of adjudication.—*In re Simon Bodenheim & Jacob Adler*, vol. 2, p. 419.

#### 15. Contents of Notice to Creditors.

When the bankrupt does not apply for his discharge within three months from the time of his being adjudged a bankrupt, the notice need say nothing about the second or third meetings of creditors.—*Anonymous*, vol. 2, p. 68.

#### 16. Delay in Making.

Laches in making an application for leave to plead a discharge in bankruptcy is a sufficient ground for denying it.

The plea of bankruptcy is not an equitable defense, but purely legal.—*Medbury v. Swan*, vol. 8, p. 537.

#### 17. Since Amendment of '74.

The 9th Section of the Amendatory Act of June 22d, 1874, which relates to the discharge of bankrupt, applies to cases commenced before the Act took effect, and not then concluded, as well as to cases commenced after its passage.—*In re King*, vol. 10, p. 566.

### V. Appearance.

#### 18.

A creditor who does not appear upon the return day of the order to show cause why discharge should not be granted, has no standing in court and cannot subsequently file specifications against bankrupt's discharge.—*In re Smith & Bickford*, vol. 5, p. 20.

### VI. Arrest.

#### 19. Debt Created by Fraud.

A debt created by fraud in which judgment has been recovered, is not affected by a discharge in bankruptcy; hence the sheriff will not be enjoined from an arrest of the bankrupt in an execution issued on such judgment.—*In re Charles G. Patterson*, vol. 1, p. 307.

### VII. Assent.

#### 20. Debts Contracted Prior to 1st Jan., '69.

The assent of creditors whose debts were contracted prior to January 1st, 1869, need not have been obtained prior to the amendment of June 22d, 1874.—*Pierson*, vol. 10, p. 193.

#### 21. Unnecessary since Amendment of '74.

Bankrupts in both voluntary and involuntary cases, commenced prior to June 22d, 1874, may be discharged without reference to the question of the amount of assets or the number of creditors assenting, provided they comply with the law in other respects.—*In re Perkins et al.*, vol. 10, p. 529.

**22. Debts since 1st Jan, '69.**

Where a majority in number and value of those creditors of a bankrupt, whose debts were contracted after January 1st, 1869, assent in writing to his discharge, he is entitled to a discharge from all provable debts, whether contracted before or after that day.—*In re Hershman*, vol. 7, p. 604.

**VIII. Assets.****23. Money neither Paid nor Received.**

Where, at the time of the application for a discharge, the assignee has neither received nor paid any moneys on account of the estate, the case is to be regarded as one in which no assets have come into his hands.—*In re Oliver W. Dodge*, vol. 1, p. 435.

**24. Portion of Profits Received as Compensation.**

Where a bankrupt has charge of, and conducts in his own name, the business of another, taking half of the net profits as his compensation therefor,

*Held*, That the right to his share of the net profits is not property to be reported as assets; and that there was no ground for refusing a discharge.—*In re Alfred Beardsley*, vol. 1, p. 457.

**IX. Assignee.****25. Failing to Record Assignment.**

When an assignee has formally accepted his appointment as assignee, and given bonds, his neglect to take into his own custody the deed of assignment and have the same recorded, when he knew that no property passed by the assignment, is no ground for withholding a discharge.—*In re Pier-son*, vol. 10, p. 107.

**X. Bankrupt, Protection of.****26. Relieved from Arrest when Debt Dischargeable.**

The bankrupt was held in custody by the sheriff of the city and county of New York, under three several orders of arrest. Four actions were pending against bankrupt in State courts.

*Held*, That proceedings will be stayed, and the bankrupt will be discharged from arrest in proper cases, until the question of his discharge in bankruptcy shall be

passed on in the Bankruptcy Court.—*In re Henry Jacoby*, vol. 1, p. 118.

**27. Bars Continuance of Suit on Provable Debt.**

A discharge is a bar to the continuance of a suit on a claim which was provable under the Bankrupt Law.—*Humble & Co. v. Carson*, vol. 6, p. 84.

**XI. Books of Account.****28. Occasional Buying and Selling.**

A party buying and selling goods for the purposes of gain, though but occasionally, is to be considered a merchant and trader, and must keep proper books of account, so that the creditors may learn the actual condition of his affairs.—*In re O'Bannon*, vol. 2, p. 15.

**29. Whether Omission Accidental or Fraudulent.**

The provisions of the Bankrupt Law of 2d March, 1867, that no discharge shall be granted if the bankrupt, being a merchant or tradesman, has not, subsequently to the passage of the act, kept proper books of account, applies whether the omission to keep them has been with fraudulent intent or not.—*In re Solomon*, vol. 2, p. 285.

**30. Idem.**

It is not necessary that the omission of a bankrupt to keep proper books of account should be willful in order to prevent a discharge. The intent of the non-keeping of books is immaterial, the mere omission is the thing plainly interdicted.—*In re Abraham Newman*, vol. 2, p. 302.

**31. Refused for Failure to Keep Proper.**

Under Section 29 of the Bankrupt Act, the failure of a merchant or tradesman to keep proper books of accounts is a bar to a discharge in bankruptcy.—*John Jorey & Sons*, vol. 2, p. 668.

**32. Idem.**

Where discharge was refused bankrupt for failing to keep proper books of account.—*In re John Maxwell Muckay*, vol. 4, p. 67.

**33. Idem.**

Where it appears from the evidence that a bankrupt has failed to keep proper books of account, the case is one in which, under Section 29, a discharge cannot be granted.—*In re Bound*, vol. 4, p. 510.



**34. Idem.**

Where a bankrupt after March, 1867, fails to keep proper books of account—such books as will enable an ordinary book-keeper to determine his true financial condition—his discharge will be refused.—*In re Schumpert*, vol. 8, p. 415.

**XII. Buying, to Sell Again.****35. Books of Account.**

Persons who buy on credit and sell again, in such wise as to be merchants or tradesmen, must keep such books in relation to their business as will furnish an intelligible account to their creditors of the state and course of their business transactions. If they neglect to do this, a discharge must be refused.—*In re Garrison*, vol. 7, p. 287.

**36. Burden of Proof.**

Where specifications are filed in opposition to the discharge of a bankrupt, the burden of proof is on the creditor; and when he fails to show just cause for refusing a discharge, it must be granted.—*In re O'Kell*, vol. 2, p. 105.

**37. Not Refused for Slight Inaccuracies.**

A discharge of the bankrupt will not be refused for slight inaccuracies or mutilations of the books of account, unless it can be shown that it was done with some fraudulent intent.—*William H. Pierson*, vol. 10, p. 107.

**XIII. Certificate.****38. Of Names of Creditors.**

The bankrupt is entitled to a certificate of the assignee giving the names and residence of the creditors who have proven their claims, as per form, in order to enable him to move the court for an order to show cause why he should not be discharged, etc. The Register has the power to make such an order, and it is the duty of the assignee to obey it.—*Blaisdell et al.*, vol. 6, p. 78.

**XIV. Certifying Questions.****39. Register cannot, Affecting Discharge.**

Where it appears from testimony elicited on the examination of a bankrupt before a Register, that a creditor was influenced by a pecuniary consideration paid to the creditor's attorney, although a very small one, not to oppose the discharge of the bank.

rupt, and the proceedings are certified up by the Register to the District Court,

*Held*, That such question is not a proper one for the Register to certify to the district judge, inasmuch as the Register is forbidden to hear any question as to the allowance of an order of discharge.—*In re Mawson*, vol. 1, p. 265.

**XV. Concealment.****40. Discharge Forfeited by.**

A bankrupt who has sworn falsely in his affidavit annexed to his inventory of property, and on his examination before the Register, and has concealed his property by covering it up in the name of his wife, forfeits his right to a discharge.—*In re William D. Hill*, vol. 1, p. 431.

**41. Idem.**

A bankrupt must be held to have willfully sworn falsely in the affidavit annexed to his inventory where he states therein that he has no assets, when he has concealed his property derived from profits in the firm of which he is really a partner, by covering them (the profits) up in the hands of his wife. He is further guilty of fraud in not delivering such property to his assignees. Discharge refused.—*In re Robert C. Rathbone*, vol. 1, p. 586.

**42. Conveyance to Wife.**

A debtor sold his farm for much less than it was actually worth to his father-in-law, who, in turn, deeded it back to the wife for a mere nominal consideration.

At the time of the transfer debtor was largely indebted, but believed himself to be solvent.

The wife repeatedly told her husband these deeds were burned. He so informed his creditors and procured credit of some of those whom he still owed to a considerable amount on the faith of his actual ownership of the farm and his record title. After his insolvency, these deeds were produced and placed on record, thus giving apparent title to the wife.

Debtor was adjudged a bankrupt, filed his schedules without including the farm, and in due time received his discharge.

In an action brought to set it aside, the referee held that the bankrupt had been guilty of concealment and false swearing, within the meaning of Section 29 of the

present United States Bankrupt Act, and that the discharge should be set aside and annulled.—*In re D. A. Rainsford*, vol. 5, p. 381.

#### XVI. *Contingent Liability.*

##### 43. Act of '44 & '67 Compared.

Where a contract of the bankrupt exists at the time of commencement of proceedings in bankruptcy, but the question of his liability thereon is, though contingent, then capable of determination and the ascertainment of the amount due, the debtor will be discharged therefrom, under the Bankrupt Act of 1867.

The acts of 1841 and 1867, in this respect compared.—*Jones & Cullem v. Knox*, vol. 8, p. 559.

#### XVII. *Continuing Contract.*

##### 44. The Portion Incurred after Adjudication.

On a continuing contract, where the liability is incurred from day to day, or month to month, a discharge in bankruptcy cannot be pleaded as a bar to any part of the liability incurred after the date of the commencement of proceedings in bankruptcy.—*Robinson et al. v. Pesant et al.*, v. 8, p. 426.

#### XVIII. *Conversion of Personal Property.*

##### 45. Releases from.

A claim for damages for a wrongful conversion of personal property is provable under the 19th Section of the Bankrupt Act of 1867, and a discharge in bankruptcy would release the bankrupt from such a claim; hence his plea of bankruptcy interposed in a suit brought in a State court to recover such damages is a complete bar, and entitles him to a dismissal of the cause.—*Cole v. Roach*, vol. 10, p. 288.

#### XIX. *Conveyances.*

##### 46. In Default of the Act.

The petition of the bankrupt was filed May 19, 1868. In January of that year he conveyed two parcels of land, and a fractional share in three several schooners, to his wife.

*Held*, That the conveyance were made after his insolvency became known to him,

that he hereby committed a fraud upon the act, and that his discharge must be refused.—*Adams*, vol. 3, p. 561.

#### XX. *Corporation.*

##### 47. Provision, 21st Section not Applicable.

The provision of the 21st Section of the Bankrupt Act for staying any suit or proceeding to await the determination of the court in bankruptcy, on the question of discharge, does not apply to a corporation which can never receive such discharge by the terms of the said act.—*Meyer v. Aurora Insurance Co.*, vol. 7, p. 191.

#### XXI. *Creditor.*

##### 48. Assent not Necessary.

A creditor whose debt was contracted before January 1, 1869, should not be allowed to vote on the question of a bankrupt's discharge as to debts contracted since January 1, 1869.—*In re Parish*, vol. 9, p. 571.

#### XXII. *Death.*

##### 49. Pending Proceedings.

A discharge cannot be granted in the case of a bankrupt who shall have died pending proceedings in bankruptcy, without complying with the requirements of Section 29 of the Act.—*In re O'Farrell*, vol. 2, p. 484.

##### 50. Idem.

Where a bankrupt died five months after filing petition, and his attorney asks for discharge on account of said death,

*Held*, That as the bankrupt had not taken the necessary oath in the 29th Section prior to his decease, and the same being necessary to the granting of a discharge, that it could not be given.—*In re Gunike, a deceased bankrupt*, vol. 4, p. 93.

#### XXIII. *Deposit.*

##### 51. Distribution among Creditors.

When a bankrupt has obtained his discharge, and a balance of his deposits for fees with the Register has been paid over to the assignee, it should be distributed among the creditors, who have been returned by the bankrupt *pro rata*. If only one creditor has proved his claim, he will be entitled to full payment, if the fund is

sufficient. The money should be distributed among the creditors, although they have failed to make a proof of their claims.—*In re James*, vol. 2, p. 227.

#### XXIV. Drawee.

##### 52. Of Bill of Exchange.

The liability of a drawee, upon a bill of exchange accepted and dishonored by him, to an indorser who then pays it, is barred by a discharge of the drawee in bankruptcy proceedings begun after his dishonor of the bill, though before the payment by the indorser.—*Thomas J. Hunt et al. v. David H. Taylor et al.*, vol. 4, p. 683.

#### XXV. Estoppel.

##### 53. Assumpsit.

*In assumpsit* for the price of goods sold, when the defendant pleads discharge in bankruptcy, the plaintiff is not estopped by the form of his action to reply that the debt was created by the fraud of the defendant.—*Stewart v. Emerson*, vol. 8, p. 462.

#### XXVI. Examination of Bankrupt.

##### 54. On Application for Discharge.

Where an assignee, who was also a creditor, neglected to make his report on the return day of the order to show cause why bankrupt should not be discharged, but subsequently appeared before the Register and applied for an order for examination of bankrupt's wife,

*Held*, That such order should be refused, as it did not appear to have been made in good faith.—*In re Moses Selig*, vol. 1, p. 186.

##### 55. Idem.

On filing the specifications in opposition to a bankrupt's discharge, the hearing upon the petition is at once transferred into court by Section 4 of the Bankrupt Act; therefore there cannot be any examination of the bankrupt by the creditors before a Register, on the application by the bankrupt for a discharge. If creditors desire a further examination of the bankrupt before the Register, to be used by them in opposing his discharge, they must proceed under Section 26 of said Act.—*In re S. F. & C. S. Frizelle*, vol. 5, p. 119.

##### 56. After Discharge.

The bankrupt's final certificate discharges his person and future acquisitions; but the lien creditor is entitled to satisfaction out of the property subject to lien.—*In re Hugh Campbell, ex parte Creditors*, vol. 1, p. 166.

##### 57. Idem.

The assignee in bankruptcy cannot examine the bankrupt, under the provisions of the 26th Section of the Bankrupt Act, after he has received his discharge.—*In re Witkowski*, vol. 10, p. 209.

##### 58. Contra.

The fact that the bankrupt has received his discharge more than two years ago, is not a good objection to his being examined in accordance to the requirements of Section 26 of the Bankrupt Act.—*In re Heath & Hughes*, vol. 7, p. 448.

#### XXVII. Exemption.

##### 59. Can only be made Prior to Discharge.

The application for the exemption allowed by the Bankrupt Act, can only be made by bankrupt previous to obtaining his discharge.—*In re Kean & White et al.*, vol. 8, p. 367.

#### XXVIII. False Swearing.

##### 60. Intentional.

Where a specification in opposition to the discharge of a bankrupt is that the bankrupt has concealed his effects, or that he has sworn falsely in his affidavit annexed to his inventory of debts, it must be shown that the acts were intentional in order to preclude a discharge.—*Re W. Wyatt*, vol. 2, p. 288.

#### XXIX. Fiduciary Debt.

##### 61. By Agent where Credit Given.

A debt incurred by the bankrupt for money collected as agent under an agreement to account and pay over the proceeds monthly to his principal, is discharged in bankruptcy.—*Grover & Baker v. Clinton*, vol. 8, p. 312.

##### 62. Existence of does not Prevent Discharge.

On a specification in opposition to a discharge, setting forth that a debt due by bankrupts was created while they were acting in a fiduciary character,

*Held*, That the fact was no ground for withholding discharge.—*In re Wm. W. Tracy, James Willson, Thos. J. Strong, and Joseph U. Orris*, vol. 2, p. 298.

**63. Idem.**

If the requirements of the act have been complied with, a discharge can only be refused on some ground set forth in Section 29. Objection to discharge, based upon the fact that the debt was a fiduciary one, is not good, for such debts are unaffected by the discharge.—*In re Elliott*, vol. 2, p. 110.

**XXX. Fifty Per Cent.**

**64. Amendment of 1866 Retroactive.**

A bankrupt having filed his petition on June 8, 1868, applies for a discharge, notwithstanding his assets will not pay fifty per centum of claims against his estate, and no written assent of a majority of creditors of proved claims is presented.

*Held*, That the act of July 27, 1868, amendatory of the 83d Section of the Bankrupt Act, applies retroactively to such cases filed after June 1, 1868, and prior to July 27, 1868, and discharge must be granted.—*In re W. Billing*, vol. 2, p. 512.

**65. Idem as to Amendment of 1870.**

Where an application for a discharge had been made prior to July 14th, 1870, and a reference ordered to a Register in bankruptcy to take necessary proofs and ascertain if the assets were not equal to fifty per cent. of the claims proved against the estate of the bankrupt, upon which he was liable as principal debtor, the Register not having made his report thereon until after the amendment to the Bankrupt Act, approved July 14th, 1870, the bankrupt filed a supplemental petition referring to the amendment of July 14th, 1870, and the court modified its original order of reference, and directed the Register, in addition to the requirements of the first order, to determine and report whether the assets were equivalent to *fifty per cent.* of the debts and liabilities contracted after January 1st, 1869.—*Rockwell & Woodruff*, vol. 4, p. 243.

**66. Assets must Equal Fifty Per Cent. of what Debts.**

When the assets of a bankrupt, after the payment of valid liens, do not equal fifty per cent. of the claims proved against him contracted subsequently to January

1st, 1869, on which he was liable as principal debtor, and he fails or neglects to file the consent of a majority in number and amount of those creditors, he can only be discharged from debts contracted prior to January 1st, 1869.—*In re Graham*, vol. 5, p. 155.

**67. Idem. Exaggerated Appraisement.**

Where an appraisement is exaggerated, although there is no evidence of any depreciation, the proceedings having been commenced after January 1st, 1869, and the debtors not having shown that their assets are or have been at any time since they filed their petition, equal to fifty per cent. of the claims proved against their estate, upon which they are or were liable as principal debtors, and not having filed the assent in writing of a majority in number and value of their creditors, to whom they are or have become liable as principal debtors, and who have proved their claims, discharges are refused.—*In re Borden & Geary*, vol. 5, p. 128.

**68. When an Estate Wasted by Litigation.**

Where the estate was originally sufficient to pay fifty per cent. of the debts proved, but a large part has been wasted by litigation, the bankrupt is entitled to his discharge without the assent of his creditors.—*Kahlerg et al.*, vol. 6, p. 189.

**69. Idem for Improper Sale.**

A bankrupt who has otherwise conformed to the requirements of the Bankrupt Law, is entitled to his discharge, if at the time he filed his petition in bankruptcy, he was possessed of property fairly worth fifty per cent. of the debts proved against his estate, upon which he was liable as principal debtor. The fact that the property was sold below what it was actually worth, should not prejudice his right to a discharge, for the reason, that, after the appointment of an assignee, the bankrupt had no further control over the property, or its disposal, all of which was left to the skill and discretion of the assignee.—*In re Lincoln & Cherry*, vol. 7, p. 334.

**70. Exclusive of Costs.**

Where the proceeds of a bankrupt's assets exceeded the amount of the claims proved against his estate, but after the payment therefrom of costs and expenses,

the amount remaining may not equal fifty per centum of said claims,

*Held*, That the bankrupt was not entitled to a discharge under the amendatory act of July 27th, 1869, unless the assent of a majority of his creditors, in number and in value were shown.—*In re Vinton*, vol. 7, p. 138.

#### 71. What Creditors must Assent.

Where the estate of a bankrupt does not produce fifty per cent. of the proven claims, it is necessary that creditors of a certain class who have proven their claims, should file their assent in writing within a limited time before the hearing of the specifications filed against the discharge of the bankrupt, in order that he may be discharged from debts contracted since January 1st, 1869.

No assent of any class of creditors is necessary to discharge a bankrupt from debts contracted before January 1st, 1869.

Creditors of debts contracted before January 1st, 1869, have no voice in opposing discharge of bankrupt from debts contracted since January 1st, 1869.

The only class of creditors who can oppose discharge of bankrupt, or withhold their assent from such discharge, on the ground that fifty per centum has not been realized, are those whose debts were contracted since January 1st, 1869.—*Wm. H. Pierson*, vol. 10, p. 193.

#### 72. Partial Discharge.

In proceedings in bankruptcy commenced after January 1st, 1869, where it does not appear either that the bankrupt's assets are equal to fifty per cent. of the claims proved against him on which he is liable as principal debtor, or that the requisite number of his creditors have assented to his discharge, a discharge from debts contracted prior to January 1st, 1869, only, will be granted, although the bankrupt shows that his assets equal fifty per cent. of the claims proved against his estate that were contracted subsequent to January 1st, 1869.—*In re J. L. Shower*, vol. 6, p. 586.

#### 73. Must Comply with Fifty Per Cent. Clause though applying after Amendment of 1874 for Discharge —Petition Filed Before.

A debtor who was adjudged bankrupt,

in involuntary proceedings, on the 28th of June, 1872, but did not petition for his discharge until July 23, 1874, after the passage of the Amendment of June 22d, 1874, is not entitled thereto, unless he complies with the *fifty* per centum clause of the Act of 1868. The amendment of June 22d, 1874, is not retrospective, so as to affect discharges to be granted in cases where the adjudication in bankruptcy was had prior to December 1, 1873.

*Arguendo*, One adjudged a bankrupt after June 22d, 1874, on a petition filed since December 1, 1873, in involuntary proceedings, will not be entitled to a discharge except by compliance with the fifty per centum clause of the Act of 1868.—*In the matter of Charles J. Francke, Jr., and Charles E. Francke, Bankrupts*, vol. 10, p. 438.

#### 74. Contra.

The 8th Section of the Act of June 22d, 1874, concerning the conditions upon which a discharge is to be granted to bankrupts, applies to cases pending when the Act was passed.

Such a statute is not retrospective in the legal sense.—*In re Griffiths*, vol. 10, p. 456.

### XXXI. Fraud.

#### 75. Prima Facie Case of Fraud.

Where eleven objections to a discharge were filed and pressed by opposing creditors, and under each an issue of fact was raised, and evidence and argument submitted,

*Held*, The opposing creditors having established a *prima facie* case of fraud, the petitioner is not entitled to his discharge.—*Doyle*, vol. 3, p. 782.

#### 76. Fraudulent Buying of Goods.

The buying of goods fraudulently, or when the debtor knew that he could not pay for them, is not a fraud which will prevent the discharge of a bankrupt.—*Rogers*, vol. 3, p. 564.

### XXXII. Fraudulent Concealment.

#### 77. Estoppel.

A debtor will be stopped pleading in bar, in a suit in a State court, a discharge in bankruptcy obtained *pendente lite*, where he fraudulently concealed from his creditor the pendency of the bankrupt proceedings until after discharge granted, and the



creditor had no other notice of the pendency of such proceedings.—*Batchelder, Adm'r, v. Low*, vol. 8, p. 571.

### XXXIII. *Fraudulent Debt.*

#### 78. Not a Bar.

Creation of a debt by fraud is not a ground for refusing a discharge to a bankrupt.—*Rosenfield*, vol. 1, p. 575.

#### 79. Idem.

The creation of a debt by fraud is not a ground upon which to oppose the discharge of a bankrupt. Such debts may be proved, and the dividend thereon shall be payment on account of said debt. Where a bankrupt contracted a debt through fraud he continues liable notwithstanding his discharge.—*In re Wright & Peckham*, vol. 2, p. 41.

#### 80. Idem.

An objection to discharge of bankrupt grounded on the fact that the debt was created by fraud is not a valid one. Such debts are not discharged by the discharge of bankrupt.—*In re Henry W. Bashford*, vol. 2, p. 73.

#### 81. Idem.

Objection to discharge based on the fact that the debt was contracted by fraud, is not good, for such debt will not be affected by the discharge.—*Stokes*, vol. 2, p. 212.

#### 82. Idem when Reduced to Judgment.

Where the ground of a complaint is the fraud in creating a debt, a judgment thereon does not merge the original indebtedness, so as to free it from the taint of fraud, or to permit it to be discharged in bankruptcy; but where the original debt arises in a contract, and the fraud is but an incident on the debt, and not its creative power, in such case the debt will be merged in judgment, and the bankrupt discharged therefrom, when such judgment was obtained prior to the filing of the petition in bankruptcy.—*Shuman v. Strauss*, vol. 10, p. 300.

### XXXIV. *Fraudulent Payments Prior to Act.*

#### 83.

Payments of money to preferred creditors, or transfers or conveyances of property, by one adjudicated a bankrupt on his

own petition, made before the passage of the Bankrupt Act, 1867, though fraudulent, are not a bar to the discharge of the bankrupt.—*Hollenshade*, vol. 2, p. 651.

### XXXV. *Fraudulent Preference.*

#### 84. Under Advice of Counsel.

The discharge of a bankrupt was refused where it appeared that he had made an illegal and fraudulent preference of one of his creditors, although it appeared he had acted under advice of counsel, and the transferee had surrendered the goods without suit by the assignee.

If the advice of counsel will be a protection in any case, it must be shown that the bankrupt acted on it in good faith, believing he had a legal right to do what he did, and the question must be one of sufficient delicacy to rebut all possible fraudulent intent in seeking the advice.—*In re Finn*, vol. 8, p. 525.

### XXXVI. *Habeas Corpus.*

#### 85. When Debt Dischargeable.

A United States District Court has power to relieve a bankrupt from arrest, on process of a State court, in an action founded upon a debt that may be discharged in bankruptcy. The question whether the debt be contracted in fraud, may be examined into and determined by the District court.—*In re Louis Glaser*, vol. 1, p. 336.

### XXXVII. *Impeaching Discharge.*

#### 86. Conclusiveness of Certificate.

The provision in the 34th Section of the Bankrupt Law, making the certificate of a bankrupt's discharge conclusive, and allowing an application within two years, in the United States District Court, to annul it, does not cut off a creditor from setting up a fraudulent concealment by the bankrupt of his property against his certificate of discharge, in whatever court he may plead it.—*Perkins v. Gay*, vol. 3, p. 772.

#### 87. Idem.

Where a creditor was not named in bankrupt's schedules, and such creditor, after discharge granted in bankruptcy, attached, by garnishee process, property of the bankrupt shown in evidence to have been concealed from the Bankruptcy Court.



*Held*, That the certificate of discharge in bankruptcy did not bind the creditor, and was no defense to his action.—*Barnes v. Moore*, vol. 2, p. 573.

#### 88. For Concealment.

When a certificate of discharge was duly granted to a bankrupt, and within the limited term of two years, two creditors, whose debt was provable against the said bankrupt's estate, applied to have his discharge annulled and set aside, on the ground that he had willfully sworn falsely in his affidavit annexed to his schedules of creditors and liabilities in that having knowledge of the residence of said creditors, and his liability to them, he did not include in his schedules the names of said creditors, or their claim,

*Held*, That the court finding the act as charged proven, and that the same was a particular fact concerning the debts, and that the creditors had no knowledge of the commission of said act until after the granting of the discharge, judgment must be given in favor of the creditors; and the discharge is therefore set aside and annulled.—*In re Herrick*, vol. 7, p. 341.

#### 89. Involuntary Bankrupt Entitled to.

Where there was no opposition to the discharge of an involuntary bankrupt, the question of competency to grant a discharge in such case, was certified for decision by the court.

*Held*. That in a proper case an involuntary bankrupt might be granted a discharge.—*Clark*, vol. 3, p. 16.

#### 90. Idem.

An involuntary bankrupt who has complied with all the provisions of the Bankrupt Act, can apply for and receive a discharge the same as a voluntary bankrupt. The 33d Section of the Bankrupt Act, as amended July 27th, 1868, and July 14th, 1870, is applicable to proceedings in involuntary bankruptcy.—*In re Bunsted*, vol. 5, p. 82.

### XXXVIII. Influencing Proceedings.

#### 91.

A discharge in bankruptcy will not be vacated on general averments.

A specification in opposition to a discharge in bankruptcy, that the bankrupt has "influenced the action" of certain creditors by a pecuniary consideration and

obligation, is sufficiently distinct to be triable.—*In re George S. Mawson*, vol. 1, p. 437.

#### 92. Jurisdiction.

Want of jurisdiction is good ground to refuse a discharge. A discharge granted without jurisdiction is no discharge.

Where bankrupt had omitted to include in Schedule B. statement of an interest in an estate in expectancy under a will,

*Held*, Discharge must be denied until the same be amended, for which leave is granted, with reference to the Register for that purpose.—*Connell*, vol. 3, p. 443.

#### 93. Only in Federal Courts.

The authority to set aside and annul a discharge in bankruptcy, conferred upon the Federal court by Section 34, is incompatible with the exercise of the same power by a State court; and the former is paramount.—*Corey et al. v. Ripley*, vol. 4, p. 503.

#### 94. Except for Want of Jurisdiction.

A bankrupt's discharge cannot be impeached in a State court for any of the reasons which would prevent the United States District Court from granting it.—*Alston v. Robinett*, vol. 9, p. 74.

#### 95. For Want of Jurisdictional Averments in Petition.

Individual creditors of members of a firm duly adjudged bankrupts on petition of one of the firm, applied to the court to set aside the adjudication, because of absence of certain jurisdictional averments in the petition.

*Held*, The questions involved in such application can properly be raised only by the creditors opposing the bankrupt's application for discharge at the proper time.—*Penn*, vol. 3, p. 582.

#### 96. Ends Summary Jurisdiction.

The summary jurisdiction of the Bankrupt Court over the bankrupt ceases with the granting of his discharge.—*Dole*, vol. 9, p. 193.

### XXXIX. Jurisdiction.

#### 97. Carrying on Business.

Where a bankrupt had been a member of a manufacturing firm in New Jersey, which failed and stopped business, and while continuing to reside in New Jersey, had an office in New York where he received and

wrote letters, and was settling up the business of the firm,

*Held*, That he was not carrying on business in New York within the meaning of the statute, and discharge must be refused for want of jurisdiction.—*Re William H. Little*, vol. 2, p. 294.

#### XL. Notice.

##### 98. Application after Sixty Days.

Where discharge is applied for after sixty days from adjudication of bankruptcy, the notice (Form 52) need be mailed only to creditors who have proved their debts. In such case the request of the assignee (Form No. 23) is not necessary. *In re Charles H. McIntire*, vol. 1, p. 151.

##### 99. When no Assets.

If no creditors have proved their debts, and no assets have been received by the assignee at the time the bankrupt applies for his discharge, the only notice which can be given is by publication, at the discretion of the court.—*Anonymous*, vol. 1, p. 122.

##### 100.

If the bankrupt does not apply for his discharge within three months from the date of adjudication, when there are no assets, the notice need say nothing about the second and third meetings of creditors.—*Anonymous*, vol. 1, p. 219.

#### XLI. Opposition to Discharge.

##### 101. Appearance on Return Day.

A creditor as assignee of a note of the bankrupt secured by a deed of trust on land, cannot come in and oppose discharge of the bankrupt unless he shall have entered his opposition and filed his specifications within the proper time and according to rule.—*In re W. C. McVey*, vol. 2, p. 257.

##### 102. Idem on Adjourned Day.

Where the discharge of a bankrupt has been repeatedly adjourned before the Register, an appearance by a creditor on any of these adjourned days in opposition is sufficient, but the specifications must be filed within ten days after the appearance.—*James M. Seabury, Jr.*, vol. 10, p. 90.

##### 103. Creditor Unaffected by Discharge cannot Oppose.

A creditor who obtains judgment for his debt, after his debtor has been adjudicated

a bankrupt, and takes out execution, cannot prove his debt in bankruptcy, and the judgment will not be affected by the certificate of discharge. Such a creditor, therefore, cannot oppose the bankrupt's discharge.—*In re Gallison et al.*, vol. 5, p. 353.

##### 104. Because Debt Fraudulently Contracted.

Opposition to discharge grounded upon the fact of debt being fraudulently created, is insufficient.—*In re Doody*, vol. 2, p. 201.

##### 105. Idem.

The creation of a debt by fraud is not a ground for refusing a discharge to a bankrupt.—*In re Isaac Rosenfield*, vol. 1, p. 575.

##### 106. Fraudulent Conveyance Prior to Bankrupt Act.

A fraudulent conveyance made, or a fraudulent preference given, before the passage of the Bankrupt Act, are neither of them good grounds upon which to oppose a discharge. Such a conveyance or preference does not come within the terms of Section 29 of said act, and a specification alleging such a conveyance or preference, will be stricken out on motion.—*Isaac Rosenfield*, vol. 1, p. 575.

##### 107. Filing.

Where a creditor at the first meeting of creditors gave notice of intention to oppose the discharge, and filed objections, the reception whereof was opposed by bankrupt at that time,

*Held*, That a creditor who had proved his debt could file specifications in opposition to the discharge at any time before the period fixed by General Order 24.—*In re Adolph Baum*, vol. 1, p. 5.

##### 108. Discretion of Court as to Appearance.

A creditor has no absolute right to appear and oppose the discharge of a bankrupt after the return day of the order to show cause, though the proceedings may have been adjourned for other purposes.

But it is within the power of the court to permit opposition to be made at any time before the discharge is granted.

If a creditor who has duly filed specifications of opposition to the bankrupt's discharge is about to withdraw them, there

may often be good reason to permit other creditors to carry on the opposition.—*In re S. S. Houghton*, vol. 10, p. 337.

**109. Paying Counsel Fee to Creditor for not Opposing.**

The creditors of a bankrupt opposed his discharge on the ground that he had procured the assent of a certain creditor to his discharge by a pecuniary obligation. The evidence showed that he had paid the creditor's counsel his fee for services rendered in the matter, amounting to twenty dollars, but it was also shown that this creditor had announced that he would not oppose the discharge before anything whatever was said about the bankrupt paying his counsel fee, and that such payment was not made a condition of his withdrawing further opposition.

*Held*, That the burden of proof was on the creditors opposing the discharge, and the proof did not sustain the specification. *In re George S. Mawson*, vol. 1, p. 548.

**110. Provable Debt.**

Any creditor who has a provable debt may oppose the bankrupt's discharge.—*Murdock*, vol. 3, p. 146.

**111. Omission from Schedule.**

The omission of the names of creditors on the schedule, with the knowledge and consent of those creditors, is not such a willful and fraudulent omission as to prevent a discharge of the bankrupt upon the objection of other creditors.—*In re Otis N. Needham*, vol. 2, p. 887.

**112. Objections Not Filed.**

Discharge will be refused by the court where, upon an inspection of the record, it appears that the bankrupt has done those acts which prevent his receiving a discharge, although no objections are interposed by creditors.—*In re Joseph L. Wilkinson*, vol. 3, p. 286.

**113. Creditors who have Not Proved their Debts.**

Creditors who have not *proved* their debts can oppose discharge of bankrupt; but they must prove, or it must clearly appear from the evidence before the court, that they are *bona fide* creditors, or the application will be denied.—*In re Boutelle*, vol. 2, p. 129.

**114. Idem.**

Creditors objecting to discharge of bank-

rupt must prove their allegations.—*Noonan & Connolly*, vol. 3, p. 267.

**115. Preferences.**

When an assignee has formally accepted his appointment as assignee, and given bonds, his neglect to take into his own custody the deed of assignment and have the same recorded, when he knew that no property passed by the assignment, is no ground for withholding a discharge.

Only those preferences which are forbidden, and made void by the 35th Section of the Bankrupt Act and the clause of the 29th Section which refers to preferences in contemplation of becoming bankrupt, are considered grounds for withholding the bankrupt's discharge.

A preference may be given which will subject the debtor to proceedings in involuntary bankruptcy, and yet be no bar to his discharge.—*In re Wm. H. Pierson*, vol. 10, p. 107.

**116. Specifications to be Specific.**

The specifications of grounds of opposition to the discharge of a bankrupt must be distinct, precise, and specific, so that he may be apprised as to what facts he must be prepared to meet and resist.—*In re Robert C. Rathbone*, vol. 1, p. 294.

**117. Vague and General.**

Vague and general specifications reciting fraud, etc., will not be allowed in opposition to discharge.—*Hansen*, vol. 2, p. 211; *Dreyfer*, vol. 2, p. 212.

**118. For Matter Prior to Bankrupt Act.**

A specification filed in opposition to a bankrupt's discharge will not be stricken out because all the transactions therein alleged as the grounds of opposition occurred long before the passage of the Bankrupt Act.—*In re Cretiew*, vol. 5, p. 423.

**119. Distinct and Precise.**

The specifications of the grounds of opposition to the discharge of a bankrupt must be distinct, precise, and specific, so that he may be apprised as to what facts he must be prepared to meet and resist.—*In re Robert C. Rathbone*, vol. 1, p. 294.

**120. Must Allege Acts Intentional—Specification as to Concealment.**

Where a specification in opposition to the discharge of a bankrupt is that the bankrupt has concealed his effects, or that he has sworn falsely in his affidavit annexed

to his inventory of debts, it must be shown that the acts were intentional in order to preclude a discharge.—*In re W. Wyatt*, vol. 2, p. 288.

**121. Must Show in what Schedules Defective.**

A specification that the bankrupt has falsely set forth in his petition and schedules, that he had no property, is defective, unless it specifies what property he had. Specifications alleging concealment or omissions from the schedules are defective if they do not allege that these acts were willful, fraudulent, or negligent.—*In re Alfred Beardsley*, vol. 1, p. 304.

**122. Sufficiency of.**

A specification in opposition to a bankrupt's discharge which avers that he has property which he has omitted from his schedule, and has been guilty of negligence in delivering to the assignee property belonging to him at the time of the filing of his petition, is specific enough to be triable; likewise a specification averring willful false swearing to his schedules on the part of the bankrupt.—*In re Robert C. Rathbone*, vol. 1, p. 324.

**123. Time Within which they must be Filed.**

The ten days within which specifications in opposition to the discharge of a bankrupt must be filed, date from the adjourned day of the hearing of the order to show cause; and not from the day first appointed.—*In re Darius Tallman*, vol. 1, p. 540.

**XLII. Oath.**

**124. Final Oath on Return Day when no Objections Filed.**

If no creditor appears in opposition to the discharge by the return day of said order, the Register may administer to the bankrupt the oath required by Section 29.—*In re John Bellamy*, vol. 1, p. 96.

**125. After Specifications Withdrawn.**

Where a bankrupt's oath is made as required by the 29th Section, and a creditor opposes the discharge with specifications, but subsequently withdraws the same,

*Held*, That the bankrupt should take and subscribe the oath after the withdrawal of the specifications.—*In re Machad*, vol. 2, p. 352.

**XLIII. Partnerships.**

**126. Individual Member Applying for.**

Where a member of an existing firm has filed an individual petition in bankruptcy, where there are firm debts and firm assets, the firm must be declared bankrupt before a member thereof can be discharged from its liabilities. This applies only to co-partnerships actually existing, or where there are assets belonging to the firm.—*In re Winkens*, vol. 2, p. 349.

**127. Individual Members of Several Firms.**

A discharge properly granted to the individual members of a firm will be available in respect to any indebtedness of any other partnership in which they were interested, and for whose debts they might be liable. The creditors of the several partnerships are entitled to preference of payment out of the assets of the firm to which they respectively gave credit.—*In re Warren Leland & Charles Leland*, vol. 5, p. 222.

**128. Surviving Partner.**

A discharge granted to the surviving partner of a firm on an individual petition would discharge him from his co-partnership, as well as individual liability; but the better practice would be to amend the petition so as to conform to the facts.—*In re Bidwell*, vol. 2, p. 229.

**129. Of Both Individual and Copartnership Debts.**

Where a member of a late co-partnership files his individual petition under the Bankrupt Act, and inserts in his schedules debts contracted by said co-partnership, and there are no co-partnership assets to be administered, he will be entitled to be discharged from all his debts, individual as well as co-partnership.

It is not necessary, in such a case, to make the other partners parties to the proceedings, or to have them brought in under General Order No. 18.

—*In re Warren C. Abbe*, vol. 2, p. 75.

**130. Copartners of a Different District.**

Where one partner residing in New York City petitioned individually, and was adjudged bankrupt, and two other partners residing in Cincinnati, Ohio, petitioned as copartners to be allowed to join in the application of the first, and file their petition in the same district,

*Held*, That the court had no jurisdiction to grant such leave, as the single partner had petitioned as an individual debtor for an individual discharge.—*In re Julius A. Boylan*, vol. 1, p. 2.

#### XLIV. Payment.

##### 131. Of Debts in Full Shortly Prior to Adjudication.

A discharge will not be withheld when it appears solely from the bankrupt's examination, that he had paid certain debts in full, a short time before he became bankrupt, no other proof being offered to show such payments were fraudulent preferences.—*Burgess*, vol. 3, p. 196.

##### 132. In Struggling to Keep up.

A bankrupt who makes payments in the course of his business with the *bona fide* expectation that he can keep along without going into bankruptcy, there being no actual design to favor or prefer, is not thereby deprived of his right to a discharge, if otherwise entitled to it, under the provisions of Section 29 of the Bankrupt Act.—*In re Brent*, vol. 8, p. 444.

##### 133. Contra Out of Usual Course.

Where a trader knows, or in reason ought to know, that he is insolvent, and makes payment of an independent debt, not in the course of trade, and without creditor's knowledge of his insolvency, such payment constitutes a fraudulent preference, and prevents the granting of a discharge.—*In re Gay*, vol. 2, p. 358.

#### XLV. Petition.

##### 134. One Copartner Separately.

Where one of two partners files a petition in the name of the firm, setting forth the fact that the other partner had already filed a petition in bankruptcy, an order may be granted that he have leave to join in the proceedings heretofore taken, but proceedings in regard to his individual creditors will take place under the second petition. Thus, such partner will receive a discharge under his own petition, and so far as the second petition is a petition for an adjudication of the firm, it may be disregarded, except as indicating assent to join in the first petition.—*In re P. & H. Lewis*, vol. 1, p. 239.

#### XLVI. Pleading.

##### 135. Omission of Creditors' Names.

Where an amended answer set up a discharge in bankruptcy, and objection was made on the ground that claimants' names had been omitted from the bankrupt's schedules of creditors,

*Held*, The discharge in bankruptcy was sufficiently pleaded, and it was admitted to be genuine by replication. The mere omission of the name of a creditor on the schedule of a bankrupt is not a substantive ground for preventing or avoiding the discharge of the bankrupt as to such creditor, unless the omission was willful or fraudulent.—*Payne & Brother v. Able and Others*, vol. 4, p. 220.

##### 136. In Bar to Suit in State Court.

A discharge under the Bankrupt Act of 1867, by a Bankruptcy court having jurisdiction, when properly pleaded in bar to a suit in a State court, whether of law or equity, is conclusive, and cannot be attacked for fraud in obtaining it.—*Hudson et al. v. Bingham et al.*, vol. 8, p. 494.

##### 137. Supplemental Answer.

Leave to defendants to interpose a supplemental answer, setting up a discharge in bankruptcy must be granted when it does not appear that the plaintiffs had disclosed their claim of lien in proving their debt in bankruptcy.—*Alexander Stewart v. Siegfried Isidor et al.*, vol. 1, p. 485.

##### 138. To Debt Revived by New Promise.

Where a debt discharged in bankruptcy is revived by a new promise, the original debt should be set out as the cause of action, and the new promise replied, when the plea of discharge of bankruptcy is filed.—*Benjamin G. Dusenbury v. Mark Hoyt*, vol. 10, p. 813.

#### XLVII. Practice.

##### 139. Effect of Discharge.

The question whether a discharge affects a debt, can only arise and be determined between the parties is a suit prosecuted to collect the debt, in which the discharge shall have been pleaded as a bar to recover.—*Wright*, vol. 2, p. 142.

##### 140. When Entitled to Discharge.

Whether the bankrupt is entitled to a discharge pursuant to the 29th Section of



the Bankrupt Act, is always a question to be decided by the District Court under the conditions prescribed in that Section.—*Coit v. Robinson*, vol. 9, p. 289.

#### XLVIII. Preference.

##### 141. Payment of Attorney's Fees.

A fraudulent debt must be one made with a view to give a preference. Payment of attorney's fees is not such a preference as will prevent discharge of bankrupt.—*In re Sidle*, vol. 2, p. 220.

##### 142. With Fraudulent Intent.

Section 29 refuses a discharge on the ground of preference only when the act is brought within the definition of Section 35 or of Section 29 itself. Under the latter it must be proved that bankruptcy was in contemplation; and under the former, that the creditor was a party to the fraud.—*In re Worthington S. Locke*, vol. 2, p. 382.

##### 143. Contra.

Where a debtor's liabilities exceed his assets, and he has ceased to meet his indebtedness as it falls due, a pledge, payment, transfer, assignment or conveyance of any part of his property, absolutely or conditionally made while in this condition, is an act of bankruptcy, and constitutes sufficient ground, under the 29th Section of the Bankrupt Act, for refusing him a discharge.—*In re Warner et al.*, vol. 5, p. 414.

##### 144. Preferences in Contemplation of Bankruptcy.

Only those preferences which are forbidden and made void by the 35th Section of the Bankrupt Act and the clause of the 29th Section which refers to preferences in contemplation of becoming bankrupt, are considered grounds for withholding the bankrupt's discharge.—*In re Pierson*, vol. 10, p. 107.

#### XLIX. Property.

##### 145. Right to Portion of "Net Profits," not Assets.

Where a bankrupt has charge of, and conducts in his own name, the business of another, taking half of the net profits as his compensation therefor,

*Held*, That the right to his share of the net profits is not property to be reported as assets; and that there was no ground for

refusing a discharge.—*In re Alfred Beardsley*, vol. 1, p. 457.

#### L. Proving Debt.

##### 146. Does not Extinguish Remedies.

Proving a debt in bankruptcy does not of itself operate as an absolute extinguishment or satisfaction of the debt. If the bankrupt's discharge is refused, the creditor who has proved his debt is remitted to his former rights and remedies.—*Dingee v. Becker*, vol. 9, p. 508.

#### LI. Proof of Debt.

##### 147. Unnecessary for Opposing Discharge.

Any creditor of a bankrupt may oppose the discharge, whether he shall have proven his debt or not.—*In re Luther Sheppard*, vol. 1, p. 439.

#### LII. Register.

##### 148. On Opposition must Return Papers to Court.

Where a creditor appears and opposes the discharge of a bankrupt before the Register, the Register must make a certificate of his proceedings, stating such opposition, and return the papers into court in like manner as if there were no opposition.—*William H. Hughes*, vol. 1, p. 226.

##### 149. Cannot Hear Question as to Allowance of Discharge.

Where it appears from testimony elicited on the examination of a bankrupt before a Register, that a creditor was influenced by a pecuniary consideration paid to the creditor's attorney, although a very small one, not to oppose the discharge of the bankrupt, and the proceedings are certified up by the Register to the District Court, with the opinion of the Register, that such payment should not deprive the bankrupt of his discharge,

*Held*, That such question is not a proper one for the Register to certify to the District judge, inasmuch as the Register is forbidden to hear any question as to the allowance of an order of discharge.—*In re Manson*, vol. 1, p. 265.

#### LIII. Regularity.

##### 150. Bankrupt Bound by.

Under Section 32, all the requirements of the act, from the commencement of the



proceedings to the end, must be conformed to as prerequisites to the granting of a discharge, and the bankrupt is bound to see to the regularity of such proceedings.—*In re John Bellamy*, vol. 1, p. 96.

#### 151. Publication of Notice.

A discharge will not be refused simply for the claim that publication of the notice of the assignee's appointment was omitted to be made.—*Strachan*, vol. 3, p. 601.

#### 152. Idem.

The debtor may obtain his discharge, although the publication of the notice of the appointment of the assignee has been made three times in the course of two weeks, instead of once a week for three successive weeks, as required by the act.

The debtor may also obtain his discharge, notwithstanding that the second and third meetings are not held at the expiration of three and six months respectively, from the date of the adjudication.

It is the duty of the debtor to be ready for examination upon due notice, but he need not notify the creditor when and where the examination is to be had.—*Littlefield*, vol. 3, p. 57.

#### LIV. Release.

##### 153. From Prison.

Where a judgment in trespass for malicious imprisonment and whipping was recovered against A who afterwards was adjudged a bankrupt,

*Held*, That upon receiving his discharge he must be released from imprisonment.—*In re Simpson*, vol. 2, p. 47.

#### LV. Residence.

##### 154. To Give Jurisdiction.

A discharge will be refused for want of jurisdiction where the testimony shows that the bankrupt did not reside or carry on business, within the meaning of the act, in the district where the petition was filed for the six months next immediately preceding the time of filing, or for the longest period during such six months, although he removed to that district more than a month before the commencement of proceedings.—*In re Leighton*, vol. 5, p. 95.

##### 155. Not Ground of Opposition to Discharge.

Neither the actual nor alleged residence or place of business of the bankrupt can be directly made the ground of opposition to his discharge.—*Burk*, vol. 3, p. 296.

#### LVI. Sale.

##### 156. Not Voidable, may be Ground for Refusing.

Sales involving all the elements of fraud, so far as the vendor is concerned, may still stand on account of the good faith of the vendee. In such case the proper and only remedy for the creditors is to oppose the bankrupt's discharge, as provided in the 29th Section of the Bankrupt Act.—*In re Josiah D. Hunt*, vol. 2, p. 539.

#### LVII. Schedule.

##### 157. Omission of Creditors by Request.

The omission of the names of creditors on the schedule, with the knowledge and consent of those creditors, is not such a willful and fraudulent omission as to prevent a discharge of the bankrupt, upon the objection of other creditors.—*In re Otis N. Needham*, vol. 2, p. 387.

#### LVIII. Second Bankruptcy.

##### 158. New Proceedings.

The debtor, on voluntary petition, was adjudged a bankrupt on the 17th of February, 1868, but neglected to make application for final discharge, until May 8, 1869. It appearing to the court that no assets had come to the hands of the assignee, and that the application for discharge was not made within one year from the date of adjudication, his discharge was refused. The debtor afterwards filed a new petition in bankruptcy and was adjudged a bankrupt, and on motion of the creditors to vacate the adjudication and strike the petition from the file,

*Held*, That the refusal of the court to grant a discharge upon that ground, was no bar to the new proceedings.—*In re J. W. Farrell*, vol. 5, p. 125.

#### LIX. Specifications.

##### 159. Extending Time to File.

The time to file objections can be kept open by adjourning any day which may be

fixed for showing cause, until a reasonable time has elapsed for the examination of witnesses.—*In re Isaac Seckendorf*, vol. 1, p. 626.

**160. Vague and General Specification Insufficient.**

Vague and general specification reciting fraud, etc., will not be allowed in opposition to discharge.—*In re Hansen*, vol. 2, p. 211.

**LX. Surety.**

**161. Not Liable when Principal Discharged.**

A security on appeal in this State (Georgia), is no longer liable when the principal is discharged in bankruptcy; this terminates the case in the State court, and prevents judgment. The security on the appeal does not contract to pay the debt, but the judgment that may be entered in the suit then pending.—*Odell v. Wotten*, vol. 4, p. 183.

**162. Contra of Public Officer.**

The certificate of discharge given to a bankrupt does not include liability as a surety for the faithful performance of duty by a public officer.—*The United States v. Herron*, vol. 9, p. 535.

**163. Idem.**

Suit was brought against defendants as sureties on the bond of a deceased collector of internal revenue. One of the defendants pleaded his discharge in bankruptcy in bar of the action, and the court held, that although this defendant was a surety to the government, he was discharged under the Bankrupt Act, and that the plea was good, this case not coming within the exceptions named in the act.

The court construes the 14th Section of the Bankrupt Act in relation to contingent debts and liabilities.—*The United States v. Throckmorton et al.*, vol. 8, p. 309.

**164. Guardian.**

The surety of a guardian is discharged in bankruptcy from the defaults of his principal occurring prior to the commencement of proceedings in bankruptcy against the surety, though the fact of such default was undetermined until after the surety received his discharge, and although the right of action against the surety did not accrue until the decree determining the

default of the guardian was rendered.—*Jones & Cullum v. Knox*, vol. 8, p. 559.

**LXI. Trustee.**

**165. For Creditors when Discharge Refused.**

Where a discharge is refused bankrupt on the ground of his having given a preference,

*Held*, The bankrupt is a trustee for his creditors. Property must be administered in accordance with the provisions of the national Bankrupt Law. — *L. I. Doyle*, vol. 3, p. 640.

**LXII. Withdrawing Objections.**

**166. Payment for, Illegal.**

If a discharge in bankruptcy be pleaded, the court cannot dismiss the cause on that ground, but must submit the issue to a jury.

A promise to pay a debt due by an applicant to be declared a bankrupt, in consideration that the payee will withdraw his objections in the Bankrupt Court to the discharge of the bankrupt, is illegal and void, and no action can be sustained on such promise.—*James M. Austin v. William Markham*, vol. 10, p. 548.

**LXIII. Wages.**

**167. Payment of, when Insolvent.**

Servant's wages paid after the passage of the Bankrupt Act, as necessary family expenses, cannot be allowed as objection to discharge.

Payments made to counsel for services "rendered and to be rendered" by bankrupt without fraud, is not a ground for refusal of discharge.

Expenditures incurred by bankrupt, while insolvent, in support of family, and the evidence is silent as to their character, the court cannot admit such expenditures as a ground for refusal of discharge.—*In re Rosenfield, Jr.*, vol. 2, p. 116.

**LXIV. Waste.**

**168. Prior to Filing Petition.**

It is no ground of objection to the discharge of the bankrupt that he caused and permitted the loss, waste, and destruction of his estate and effects, and misspent and misused the same, unless such loss, etc.,

occurred after the filing of the petition.—*Rogers*, vol. 3, p. 564.

#### LXV. Wife.

##### 169. Non-Attendance Forfeits Discharge.

The penalty for disobedience of the wife to attend and be examined is visited upon the bankrupt by refusing him a discharge.—*Van Tuyl*, vol. 2, p. 70.

#### LXVI. Witness.

##### 170. May be Examined after Petition Filed for Discharge.

The time to examine witnesses does not expire by the bankrupt filing his petition for a discharge.—*In re Seckendorf*, vol. 1, p. 626.

### DISCONTINUANCE OF PROCEEDINGS.

See PROCEEDINGS IN  
BANKRUPTCY,  
PETITION.

#### 1. For Failure to Attend before Register.

Where a petitioner in bankruptcy fails to attend before the Register on the day fixed in the order of reference, he may, nevertheless, be adjudicated a bankrupt within a reasonable time thereafter. If he does not appear within a reasonable time, upon the fact being reported to the court by the Register, the petition may be dismissed.—*In re Benjamin H. Hatcher*, vol. 1, p. 890.

#### 2. Before Choice of Assignee.

When the petitioning creditor, the bankrupt, and all the creditors who have proved their debts, desire the court to dismiss the proceedings before the choice of an assignee, an order will be made by the court directing that the proceedings be dismissed, and allowing the messenger to deliver up to the bankrupt the property seized, upon the payment of costs.—*In re William D. Miller*, vol. 1, p. 410.

#### 3. Too Late after Adjudication.

After an adjudication has been made it is too late to make a motion to dismiss the proceedings and settle with the debtor. If, however, the parties desire to make a settlement they may proceed under Section 43 of the Bankrupt Act, and have the es-

tate wound up by trustees.—*In re Sherburne*, vol. 1, p. 558.

#### 4. Terms on which Granted.

A petition by one copartner against another is *quasi in invitum*, and the objecting partner may show that the firm is not insolvent, though, in such a case, if creditors intervened, perhaps the court might require security to be given for the payment of the joint debts before dismissing the petition.—*In re James L. Fowler*, vol. 1, p. 680.

#### 5. Of an Appeal while Under Injunction.

Before an order to show cause was returnable, an appeal in the State court was called in its order and dismissed by the plaintiff's attorney, he having had notice of a stay granted by the Bankruptcy Court, and a motion was thereupon made for an attachment for disobedience of the stay.

*Held*, That no action of the plaintiff in regard to this appeal would tend to enforce any demand against the bankrupt, nor deprive the assignee in bankruptcy of any property or right, and, therefore, the dismissal of the appeal could not be a violation of the order of this court forbidding proceedings to enforce the plaintiff's claim.—*In re Hirsch*, vol. 2, p. 3.

#### 6. Idem, for Irregularity.

Where a person claiming to be a creditor of a bankrupt, after the rejection of his claim by the District Court, undertook to appeal from such decision to this court, under Section 8 of the Bankrupt Act of March 2d, 1867, but did not comply with the provisions of that section, in regard to entering his appeal, or with the provisions of General Order, No. 26, prescribed by the Justices of the Supreme Court, in regard to filing his appeal, and setting forth a statement in writing of his claim, this court, on motion of the assignee in bankruptcy, dismissed the attempted appeal.—*In re Columbus C. Coleman*, vol. 2, p. 671.

#### 7. Prior to Adjudication without Notice.

If the petitioning creditor in a case of involuntary bankruptcy desires to discontinue proceedings, and have his petition dismissed, he may do so before adjudication, without giving notice to other creditors of the alleged bankrupt.—*Camden Rolling Mill Co.*, vol. 3, p. 590.

### 8. Failing to Appear and Proceed on Adjourned Day.

Until adjudication, the only parties to the proceedings are the petitioning creditors and the debtor. The other creditors must file a new petition or petition to be substituted under the last clause of the 42d Section of the Bankrupt Act.

When on such adjourned day the petitioning creditor does not "appear and proceed," and the understanding with the debtor is that such failure to appear shall be equivalent to a dismissal, and no other creditor appears to be substituted, the proceedings are at an end.—*Camden Rolling Mill Co.*, vol. 3, p. 590.

### 9. Not to be Granted after Expiration of Time to Contend Disputed Claims.

If assignments of policies of insurance belonging to a bankrupt, prior to his adjudication, are valid, they can be maintained as against the assignee to be appointed in bankruptcy proceedings, and if they are not legal and binding, they should not be made so as against non-assenting creditors by the dismissal of proceedings after the expiration of the time allowed to dissenting creditors to commence proceedings, in order to avoid a preference, has elapsed.—*In re Bush*, vol. 6, p. 179.

### 10. Where Petition not Signed or Verified by Petitioning Creditors.

On a motion to dismiss a petition in bankruptcy for the reason that it was not signed or sworn to by the petitioning creditors or either of them,

*Held*, That the general attorneys or creditors cannot make, sign, and verify for such creditors a valid petition, as the debtor must be adjudged a bankrupt on the petition of one or more of his creditors, and not on that of their agent or attorney. Petition dismissed, and all orders made thereunder vacated.—*In re Butterfield*, vol. 6, p. 257.

### 11. Where Filed as Co-partners by Persons Connected only by Interest in Joint Venture.

Two firms shared in a certain venture, and kept an account at bank in the name of one firm, adding the word "Co.," and so signed the checks.

*Held*, That these checks did not establish a co-partnership between the two firms,

and that the holder of one of the checks thus signed could not file a petition in bankruptcy against the members of both firms. Petition dismissed with costs.—*In re Warner et al.*, vol. 7, p. 47.

### 12. In an Equity Suit, Where Adequate Remedy at Law.

Where the remedy at law is plain, adequate, and complete, without any reasonable doubt, equity will decline the jurisdiction, provided the objection is taken by demurrer or is claimed in the answer. Bill dismissed, without cost to either party.—*Garrison, Assignee, v. Markley*, vol. 7, p. 246.

### 13. Stipulation for Discontinuance may be Avoided when Obtained by Fraud, but not the Release Given therefor.

That this court might set aside the stipulation of discontinuance, upon satisfactory proof that it was obtained by fraud, or given improperly under a mistake of fact; this would be of no advantage to the bankrupt unless the release was also set aside, which could not be done, for the reason that it was an act between the parties carrying out a settlement privately made out of court, and that by the dismissal of the proceedings, the case passed out of the jurisdiction of the Bankruptcy Court.

That the stipulation for the absolute discontinuance of the proceedings would furnish no defense to an action in a State court, as it is the receipt and release, and not the stipulation, which must be avoided by proceedings in that court.—*In re Bieder*, vol. 7, p. 552.

### 14. By Death of Bankrupt after Entry of Order of Adjudication.

A proceeding in bankruptcy will not be discontinued by the death of the bankrupt between the time of entry of the order of adjudication and the physical "issuing of the warrant."—*In re E. C. Litchfield*, vol. 9, p. 506.

### 15. Proceedings Adjourned Without Naming Day.

The want of an adjournment to a day certain does not terminate the proceedings.

Proceedings for adjudication of bankruptcy *in invitum*, can be discontinued only by an order of the court on special application.

Where the parties appear and join issue and no further proceedings or adjournment is had, the matter is to be considered as pending from day to day until disposed of; hence any other creditor may come in under Section 42 of said act upon any such subsequent day, and may prosecute the original petition upon satisfying the court that the original creditor does not intend to prosecute the matter further. A failure to *proceed* confers upon another creditor the right to intervene equally with a failure to *appear*.

The pending of a petition for leave to discontinue the proceeding does not deprive any outside creditor of the right to intervene, but is notice to him and all other creditors, that the original petitioning creditor does not intend to proceed further in the matter.—*Buchanan*, vol. 10, p. 97.

#### 16. Right of Having a Case Discontinued.

On the 20th of October the court entered an order of discontinuance and required the delivery of the property on payment of the fees of the marshal and clerk. Owing to some dispute as to the marshal's fees the property was transferred to one of the directors of the bank to hold as agent of the marshal.

On the 31st of October, C., another creditor, filed his petition asking to have proceedings stayed on the order of discontinuance, and vacated, and that he might be allowed to appear at the November term, and be substituted for the original petitioner, to prosecute the original petition.

*Held*, That the order of the 20th of October was not a final discontinuance of the cause, and the proceedings were actually pending until the conditions of the order were complied with, whatever hindrance arose to delay such compliance, and the case was still in court when the second creditor intervened.

That a right to have a case discontinued does not *per se* operate as a discontinuance, or divest the court of jurisdiction.—*Lacey, Downs & Co.*, vol. 10, p. 478.

#### 17. Verified by Officer of Corporation without Special Authority.

On a motion to vacate the order to show cause, in creditor's petition, for the reason that the verification and signature of the

cashier of the bank is not a proper signature and verification, where no special authority is shown, the respondent also put in a denial of the act of bankruptcy and demanded a jury trial.

*Held*, That the alleged bankrupt waived his objections by taking issue upon the petition and demand for trial. Motion to dismiss denied, and case ordered to stand for trial.—*McNaughton*, vol. 8, p. 44.

#### 18. On Stockholders Purchasing all Claims against Corporation.

Where the stockholders of a bankrupt railroad company purchase in good faith all the outstanding floating indebtedness of the company, except a few minor claims, and all the creditors, except those representing these few claims, desire such a result, they should be allowed to have the bankruptcy proceedings dismissed, on giving proper security for the payment of the objecting creditors.

The proper practice in such case is to require the deposit of adequate security for the payment of the claims of the non-assenting creditors, to remain until any contingency about them is ultimately settled by the highest court to which a case can be taken; the claims to be prosecuted with reasonable diligence.—*Indianapolis, Cincinnati & Lafayette Railroad Company*, vol. 8, p. 302.

#### 19. By Bankrupt on Payment of all Debts Exceeding \$250.

Where there are no other debts beside that of the petitioning creditor, on which the debtor may be adjudged bankrupt, he is entitled to have the proceedings against him dismissed on the payment of the petitioning creditor's debts and the costs.—*Sheehan*, vol. 8, p. 353.

#### 20. Not Allowed when Application made to Intervene.

A creditor filed petition to have his debtor adjudged bankrupt, and subsequently, on the creditor's debt being settled by the debtor, on the return day of the order to show cause, entered a motion to dismiss the proceedings. Another creditor presented a petition alleging the acts of bankruptcy charged were true, and praying that the motion be denied and the case proceed.



*Held*, That while permission to withdraw would not prevent other creditors from instituting new proceedings, it would delay and embarrass the operation of the act, and it must, therefore, be denied.—*Mendenhall*, vol. 9, p. 380.

#### 21. Entitled to, if Insane when Petitioning Creditor's Claim Contracted.

Creditor of B. files a petition against him, asking his adjudication in voluntary bankruptcy. The order to show cause was served on him, and on his default to answer he was adjudged a bankrupt, and after the appointment of an assignee, the property of B. was turned over to him, but no distribution among the creditors was ever made.

Some time thereafter, B. comes into court with a petition, supported by affidavits, showing that he was *non compos mentis* at the time the debts of the petitioning creditors were created, as well as at the time of the institution of proceedings and the adjudication, and until a very recent period.

*Held*, That under the above state of facts, the application to set aside the default and subsequent adjudication should be granted, and B. now allowed to show cause why he should not be adjudged a bankrupt.—*In re Murphy*, vol. 10, p. 48.

#### 22. When all the Creditors Apply for.

If *all* the creditors of a debtor express a desire to dismiss the proceedings, they should, as a rule, be allowed to do so.—*In re P. H. Heffron*, vol. 10, p. 213.

#### 23. When Sued for Conversion of Personal Property and Discharge Plead.

A claim for damages for a wrongful conversion of personal property is provable under the 19th Section of the Bankrupt Act of 1867, and a discharge in bankruptcy would release the bankrupt from such a claim; hence his plea of bankruptcy interposed in a suit brought in a State court to cover such damages is a complete bar, and entitles him to a dismissal of the cause.—*Cole v. Roach*, vol. 10, p. 288.

#### 24. Plea of Discharge to be Tried by Jury, Court not to Dismiss.

If a discharge in bankruptcy to be pleaded, the court cannot dismiss the cause on that ground, but must submit the issue to a jury.

A promise to pay a debt due by an applicant to be declared a bankrupt, in consideration that the payee will withdraw his objections in the Bankrupt Court to the discharge of the bankrupt, is illegal and void, and no action can be sustained on such promise.—*James M. Austin v. William Markham*, vol. 10, p. 546

### DISCOVERY.

#### As a Ground of Equity.

Where the complainant knows what the goods, transferred in fraud of the Bankrupt Act, consisted of, he cannot claim equity jurisdiction, on the ground of discovery, because he is ignorant of their precise amounts, for he can compel the examination of the preferred creditor and obtain a full disclosure.—*Garrison v. Markley*, vol. 7, p. 246.

### DISCRETION.

#### 1. Allowance of Counsel Fee to Petitioning Creditors.

Whether counsel fee shall be allowed petitioning creditors, as well as the measure of such fee, rests with the court, and is a question addressed to its equity.—*In re Daniel Williams*, vol. 2, p. 83.

#### 2. Terms of Sale of Incumbered Property.

That it is a matter of discretion with the court to sell subject to, or free of, the liens or incumbrances.—*In re Kahley et al.*, vol. 4, p. 378.

#### 3. Entertaining Actions.

Courts have no authority to exercise discretion in the entertainment of actions over which they are given jurisdiction when properly applied to for the exercise thereof.—*Cook v. Waters, Whipple et al.*, vol. 9, p. 153.



## DISMISSAL OF PETITION.

See DISCONTINUANCE OF  
PROCEEDINGS,  
PETITION.

## 1. Death of Partner Prior to Adjudication.

The decease of one partner prior to any adjudication upon the question of bankruptcy, is not legal cause for dismissing the petition.—*Hunt, Tillinghast & Co. v. Poole & Steere*, vol. 5, p. 161.

## 2. Reduction of Claim below Jurisdictional Limit.

Where the alleged bankrupt has counter claims against the petitioning creditor of such a nature as are provable in bankruptcy, and the amount so provable will reduce the petitioning creditor's claim below two hundred and fifty dollars, the petition will be dismissed.—*In re Osage Valley and Southern Kansas R. R. Co.*, vol. 9, p. 281.

## DISPUTED TITLE.

See ASSIGNEE, CLAIM, AND  
DELIVERY,  
POSSESSION,  
PRACTICE,  
PROPERTY,  
SALE.

## 1. Application for Sale to Court, not Register.

An assignee desiring to sell property because the title is in dispute, must apply to the court by petition, and not to a Register.—*Graves*, vol. 1, p. 287.

## 2. When Levy after Adjudication to Satisfy a Prior Lien.

A levy was made by the sheriff on certain goods of bankrupt after the date of filing his petition in bankruptcy, on a judgment rendered before the filing of the petition, in consequence of a lien claimed by the judgment.

*Held*, That the title being vested in him, the assignee must make sale and deposit proceeds of such goods subject to whatever claims may be determined by the court to be upon them.—*G. W. Pennington, Assignee in bankruptcy of James F. Stewart, v. Sale & Phelan et al.*, vol. 1, p. 572.

## 3. Determination of, must be by Plenary Suit.

Where a party lays claim to a certain fund, the possession of the depositary is his possession, provided his claim is just and legal; therefore, if the assignee in bankruptcy would divest him of the possession and control of the fund in question, he must do it by a suit at law or in equity, as provided in the third clause of Section 2 of the Bankrupt Act.—*Smith v. Mason*, vol. 6, p. 1.

## DISQUALIFICATION OF JUDGE.

See JUDGE.

## Former Interest in Subject of Litigation.

A judge who has been a depositor in an insolvent banking institution, but who has sold his claim, is not thereby disqualified from sitting in the matter, although the motive on the part of the purchaser of the claim may have been to remove the disqualification.—*In re Sims & Co.*, vol. 7, p. 407.

## DISSOLUTION OF PARTNERSHIP.

See PARTNERSHIP.

## Formal Dissolution.

A mere formal dissolution of the partnership while there are assets, etc., will not prevent the operation of the act upon the partners either in a voluntary or involuntary case.—*Crockett*, vol. 2, p. 208.

## DISTRIBUTION. †

See ASSETS,  
MEETINGS,  
PRIORITY,  
REGISTER,  
SAVINGS BANK,  
STATE INSOLVENT  
LAWS.  
SURETY,  
UNITED STATES.

## 1. State Court cannot Interfere.

The distribution of the assets of a bankrupt cannot be interfered with by process of a State court. Money awarded under a rule of court cannot be attached.—*In re Bridgman*, vol. 2, p. 252.

**2. Idem.**

Neither local inclinations, nor the employment of the process of State courts can longer be successfully employed to thwart or defeat the equal distribution of an insolvent debtor's estate among all his creditors, regardless of their locality.—*J. R. McDonough, Assignee, v. Raftery*, vol. 8, p. 221.

**3. Raison d'Etre.**

The property of an insolvent debtor represents, in whole or part, the credit given him by his creditors, and in good morals belongs to them; and the Bankrupt Act, which, under certain circumstances, evincing bad faith upon the part of the insolvent, compels a distribution of such property among the creditors in proportion to their debts, is a wise and just measure.—*Silverman*, vol. 4, p. 522.

**4. Proceeds, Fraudulent Deed.**

When a deed fraudulent as to prior creditors of the grantor is set aside, all creditors, prior and subsequent, share in the fund *pro rata*.—*Smith, Assignee, v. Kehr et al.*, vol. 7, p. 97; *Idem*, vol. 10, p. 49.

**5. Transfer by Insolvent, for Purpose of.**

The Bankrupt Act forbids a transfer by one insolvent to a creditor of all his property, for the purpose of a *pro rata* distribution among all his creditors.—*Harrison v. McLaren*, vol. 10, p. 244.

**6. When Claims Purchased by Copartners.**

Where nearly all the debts against a bankrupt copartnership, comprised of three copartners, have been purchased in the interest of two of the copartners, by two of their friends, to whom the money for such purchase was furnished by those partners, the third partner, not contributing, objects to the proof of the purchased claims as illegal, although it is not denied but that they were originally *bona fide* claims against the copartnership.

*Held*, That a decree will be entered providing for the payment in full, by the assignees, of the unpaid and unpurchased proved debts, with interest;

For the payment into court of the amount of the unpaid unproved debts with interest;

For the payment of the commission of the assignees, and the charges, fees, dis-

bursements and expenses of their attorney and counsel, and the fees of the Register and clerk, for the payment to the two purchasers (friends of two of the bankrupts) of the amount paid out by them in the purchase of the copartnership debts, together with interest;

For the transfer of the remainder of the estate by the assignee to the bankrupts, jointly, by proper instruments.—*In re Lathrop et al.*, vol. 5, p. 43.

**7. Savings Banks.**

The Acts of the Legislature of New York, Chapter 257 of the Laws of 1853, and Chapter 136 of the Laws of 1858, do not entitle a savings bank to be preferred to other creditors in distributing the estate of a bankrupt bank of deposit under the Bankrupt Law.—*Sixpenny v. Stuyvesant, Savings Bank*, vol. 10, p. 399.

**8. Section 28 Gives no Priority Over Secured Creditors.**

The 28th Section of the Bankrupt Act does not give to the five classes of creditors therein enumerated, any priority over secured creditors. That by the laws of New Jersey landlords and operatives, in cases of this nature, are entitled to the payment of their preferred claims, *pro rata*.—*McConnell*, vol. 9, p. 387.

**9. Bailee Confusing Goods Bailed.**

Where a bailee, prior to his bankruptcy, mixes the property bailed (wheat) with his own, so that the identical property cannot be distinguished, the bailor can only prove as a general creditor and share *pro rata* against the estate in bankruptcy.—*Adams v. Meyers*, vol. 8, p. 214.

**10. Special Deposit.**

A bankrupt appropriated seventy-two twenty dollar gold pieces left with him as a special deposit. The depositor filed her petition to have her debt paid in full out of the general assets. The banker being insolvent and his estate paying only twenty per cent. on the dollar,

*Held*, She could only share *pro rata* with the other creditors.

“Where the trust property does not remain in specie, but has been made away with by the trustee, the *cestui que trusts* have no longer any specific remedy against any part of his estate in cases of bankruptcy

or insolvency, but they must come in *pari passu* with other creditors, and prove against the trust estate for the amount due them.—*King*, vol. 9, p. 140.

#### 11. Two Funds.

Section 36 of the Bankrupt Act only applies to distribution of partnership and individual assets remaining after the satisfaction of liens thereon. And a creditor of a partnership having a lien on both the partnership and individual assets of the members, may resort to either fund for payment at his option, unless there are creditors having liens on the individual fund, when the equitable rule as to two funds will apply, and the partnership creditor must first exhaust the partnership fund.—*In re Lewis*, vol. 8, p. 546.

#### 12. Insurance on Debtor's Life.

A creditor, after the bankruptcy of his debtor, takes out an insurance on the life of his debtor as security for the debt due him, and pays all the premiums out of his (the creditor's) own money. He also proves his debt in bankruptcy, and receives dividends thereon. The bankrupt dies prior to the declaration of the last dividend, and the insurance company pays the creditor in full the original amount of the debt.

*Held*, The creditor must pay to the assignee in bankruptcy the whole amount received from the insurance company, over the amount sufficient, with the dividends and payments previously made, to pay the debt in full, but he was entitled to deduct also the amount of premiums paid by him, with interest from the time of payment.—*Newland*, vol. 9, p. 62.

#### 13. Joint and Separate Creditors.

Where there are both joint and separate debts, proved in a bankruptcy on a separate petition, the joint creditors are not entitled to participate in the distribution of the assets until the separate creditors are paid in full.—*Byrne*, vol. 1, p. 464.

#### 14. Individual Assets—Partnership Creditors.

Where there are both individual and partnership creditors of a bankrupt, but the assets are individual only, though mainly consisting of goods purchased by

the bankrupt from the partnership on its dissolution prior to the bankruptcy, and being principally the same goods, in the purchase of which the partnership debts had originated; the partnership creditors will be entitled to be paid *pari passu* with the individual creditors.—*In re Frederick Jewett*, vol. 1, p. 491.

#### 15. Creditor Entitled to Dividends from Joint and Several Estates of Debtor.

*Held*, That the 36th Section of the Bankrupt Act of 1867, does not prohibit such creditor from proving his debts and taking dividends against the joint and separate estates of his debtors, he being a legal creditor of the individual copartners in respect of the note bearing their individual names.—*Mead, Assignee, v. National Bank of Fayetteville*, vol. 2, p. 173.

#### 16. Idem.

A creditor, the obligee of a joint and several bond, given by the members of a copartnership, is entitled to dividends out of the several assets of the individual bankrupts, members of the firm; the firm, and its several members, having been adjudicated bankrupts.—*In re Edward Bigelow, David Bigelow, and Nathan Kellogg*, vol. 2, p. 371.

#### 17. Partnership Note Indorsed by Member of Firm.

Where the creditor holds the note of a copartnership indorsed by one of its members, he may prove in bankruptcy against the copartnership fund, and also against the separate estate of the copartner indorsing; and he may elect out of which fund he may be paid.

*Arguendo*, He may collect dividends from both funds.—*Stephenson v. Jackson, Assignee*, vol. 9, p. 255.

#### 18. Individual Obligation for Copartnership Property.

Where the original consideration of a claim passed to a partnership, but the obligations given for the same were executed by the individual members of the firm as such,

*Held*, That the creditors holding such obligations are entitled to a credit out of the individual estates.—*Bucyrus Machine Co.*, vol. 5, p. 303.

**19. Liquidating Copartner.**

Where a partnership has been dissolved, and one of the copartners purchases *all* of the assets of the firm and agrees to pay *all* of the debts, and both parties subsequently become bankrupt, and are individually put into bankruptcy, so that there is no solvent partner and no firm property,

*Held*, Under the Bankrupt Act of 1867, that the creditors of the firm, as well as the individual creditors of the partner who assumed to pay the firm debts, were entitled to share, *pari passu*, in the estate of such partner.—*Downing*, vol. 8, p. 748.

**20. Idem.**

A and B were partners in trade, and A sold out his interest to B, who agreed in writing to pay all the firm debts. He continued in trade and added to the stock of goods by purchase from time to time, and some months after the dissolution was adjudged a bankrupt.

*Held*, That the joint creditors of A and B must share *pro rata* with the individual creditors of B, in the distribution of the bankrupt's estate.

That the firm creditors can participate in a dividend without showing that they have exhausted the individual estate of A, the retiring partner.—*Rice*, vol. 9, p. 373.

**21. Idem. Election by Creditors.**

Where one member of a copartnership, upon a dissolution of the firm, receives the firm assets and agrees to pay the firm debts, on the subsequent bankruptcy of the firm, the firm creditors may, at their election, prove as separate creditors of the estate of the liquidating copartner, and share *pari passu* with the individual creditors.—*In re Walter P. Long & Co.*, vol. 9, p. 227.

**22. Though Solvent Copartner no Firm Assets.**

It is a well-established fact in England and in the United States, that where there are partnership and individual debts, and there are no partnership assets and no solvent partner, the debts of the firm and of the individual member can be proved, and the estate is to be distributed *pari passu* among the creditors.—*In re Knight*, vol. 8, p. 436.

**23. Individual Debts Contracted on Faith of Copartnership Assets.**

A and B were copartners in trade, but A

owned most all of the property put into the firm in his own individual right, and at the time of the formation of the partnership was in debt to some extent. This property was all he was worth, and his individual debts were contracted on the strength of this property. The firm carried on business several years, when the bulk of copartnership property was sold out under a deed of trust given by the firm to secure firm indebtedness, but no formal dissolution took place. A short time afterwards A filed his voluntary petition in bankruptcy; at this time the copartnership assets consisted of some personal property and a few outstanding accounts from which the assignee realized nothing.

*Held*, that the individual and copartnership creditors should share equally.—*Goedde & Co.*, vol. 6, p. 295.

**24. In Case of Surplus Unproved Claims to Share.**

In the distribution of assets, a single creditor who has proved his claim, is entitled to be paid in full, if the fund be sufficient; if there is more than enough for this purpose, it should be distributed *pro rata* among the creditors who have failed to make proof of their claims, but whose claims have been acknowledged to be valid by the bankrupt.—*In re Haynes*, vol. 2, p. 227.

**25. Delay in Asserting Lien.**

A fund having been recovered not in virtue of any right in the complainant personally, but in virtue of the rights of the bankrupt's creditors generally, and in virtue of the clear legal right of all the creditors, under the Bankrupt Law, it must be distributed among them generally and not given to one who has lain by and only asserted his special lien after recovery.—*White v. Jones*, vol. 6, p. 175.

**26. Judgment has no Lien on Proceeds of Promissory Note.**

In the distribution of the assets of the bankrupt derived from the collection of a promissory note, a creditor whose claim is in judgment has no priority, and will share *pro rata* with the other creditors.—*Hurdes*, vol. 3, p. 580.

**27. Rent—Landlord's Lien.**

A landlord claimed a preference for rent of a plantation leased by him to the bank-

rupt, upon which plantation, it was alleged, there was remaining, at the time of the adjudication of bankruptcy, property more than sufficient to pay the rent due, which property was sold by the assignee.

*Held*, That the petitioner having failed to take the necessary steps to secure his lien on the property for the rent due, had no prior claim in the fund in the hands of the assignee, and that he must share *pro rata* with the general creditors. *Austin v. O'Reilly, Assignee*, vol. 8, p. 129.

#### 28. Commercial Paper—Partial Payment by Maker.

Where commercial paper is indorsed by a firm in its firm name, and also by the individual name of one or more members of the firm, and the makers of the note become embarrassed and bankruptcy ensues to the indorsers of the note, and the holders accept with permission of court forty per cent. from the makers, they are only entitled to dividends against the indorsers, individually, as a firm, and to an amount equal to their claim after deducting the forty per cent. received from the makers. —*Howard Cole & Co.*, vol. 4, p. 571.

### DIVIDEND.

See CREDITORS,  
DISTRIBUTION,  
NOTICE,  
PRIORITY,  
REGISTER,  
SURETY.

#### 1. Exception Allowing Joint Creditors to Share *Pari Passu* with Individual Creditors.

The exception allowing joint creditors to receive dividends *pari passu* with the separate creditors, in cases where there is no joint estate, and no solvent partner, is inoperative under the Bankrupt Law of 1867. —*Byrne*, vol. 1, p. 464.

#### 2. Irrespective of Collateral Security.

In the settlement of insolvent estates, equity allows the creditor to prove and take a dividend on his whole debt, without regard to any collateral security he may hold. —*Jervis v. Smith*, vol. 3, p. 594.

#### 3. From both Joint and Separate Estate.

A petition was filed by the assignee of a bankrupt firm showing that a certain cred-

itor, who held notes signed by the firm and by an individual member thereof, had proved his claim against the firm estate and also against that of the individual partner, the petitioner praying that such creditor might be compelled to elect the estate from which he will receive his dividend.

*Held*, That the creditor was entitled to the advantage gained by his caution and diligence and could receive dividends from both estates. —*Emery et al., Assignees, v. Canal National Bank*, vol. 7, p. 217.

#### 4. When it may be Stayed.

Under what circumstances a dividend may be stayed considered. —*Jaycox & Green*, vol. 7, p. 803.

#### 5. Secured Creditor, or Amount of Indebtedness in Excess of Security.

A creditor holding security is only entitled to a dividend upon the balance of his claim after deducting the proceeds of securities in his hands. —*Jaycox & Green*, vol. 7, p. 803.

#### 6. Staying Dividend Pending Writ of Error.

Where a judgment on which a *superseas* and stay of execution has been granted by the State court, pending the decision of a writ of error, is proved in bankruptcy, the Bankrupt Court will stay the payment of any dividends on the claim during the pendency of the writ of error. —*In re Daniel Sheehan*, vol. 8, p. 845.

#### 7. On Contribution to Capital.

Where money was advanced by A to B for capital in trade, with the understanding that B should not be pressed for payment, but with no binding contract delaying or deferring payment, and no misrepresentation was made to B's creditors, A was held entitled to share in the dividends of B's estate under a composition deed in the usual form. —*Lane & Co.*, vol. 10, p. 135.

#### 8. Protest of Bankrupt Insufficient to Prevent.

A bankrupt cannot, by mere protest made to the assignee, alleging want of jurisdiction in the court, in a case commenced since the 1st of December, 1873, prior to the approval of the late amendments of the Bankrupt Law, stop the declaring of a



dividend, which could be legally declared under the law prior to the amendments.—*Rosenthal*, vol. 10, p. 191.

#### 9. Withholding Dividend Pending Suit.

The creditors of A. and K. declared a dividend. R., one of the creditors, was also a debtor of A., one of the members of the firm, which debt appeared on A.'s individual schedules.

The assignee had brought a suit in the State court to recover from R. the amount due the estate of A., which action was still pending.

On the refusal of the assignee to pay R. the amount of the dividend, a motion was made to compel payment.

*Held*, That the assignee could withhold the payment of the dividend to R., declared upon the net proceeds of the joint stock of A. and K., until the recovery or the final determination of the suit now pending.

That it is only when the claims of creditors are to be determined that the assignee must consider the estates of the firm and of the individual members separately.—*Atkinson v. Kellogg*, vol. 10, p. 535.

#### DOWER

. See EXEMPTION.

#### 1. Wife of Bankrupt not Entitled out of Lands Owned at Time of Filing Petition.

Wife of bankrupt not entitled to claim dower out of lands owned by bankrupt when he filed his petition in bankruptcy—the bankrupt being still alive.—*Kelly v. Strange*, vol. 8, p. 8.

#### 2. Contra.

The dower right of the wife of a bankrupt is not divested by proceedings under the Bankrupt Act.—*In re Angier*, vol. 4, p. 619.

#### 3. Idem.

The widow of a bankrupt, where petition in bankruptcy was filed after the act passed by the Legislature of North Carolina repealing the statutory provision and restoring the common law right of dower, the bankrupt dying after the issuing of the warrant in bankruptcy, is entitled to dower in the land owned by the bankrupt at the time of the filing of his petition. The act referred to repealed the statutory

provision in regard to dower, which, in effect, restored *eo instanti* the common law. The Legislature by that act attempted to create additional exemptions to those theretofore allowed by law; those exemptions are void as to creditors whose debts were contracted previous to the passage of the act.—*In re Hester*, vol. 5, p. 285.

#### 4. Joining in Fraudulent Conveyance by Wife does not Bar.

As against the assignee in bankruptcy, the wife is not barred or estopped to claim dower by reason of her having joined her husband in a deed which is fraudulent as to creditors, and which has for this reason been set aside at the instance of the assignee.—*Cox v. Wilder et al.*, vol. 7, p. 241.

#### DRAWEE.

#### Liability Released by Discharge in Bankruptcy.

The liability of a drawee, upon a bill of exchange accepted and dishonored by him, to an indorser who then pays it, is barred by a discharge of the drawee in bankruptcy proceedings begun after his dishonor of the bill, though before the payment by the indorser.—*Taylor et al.*, vol. 4, p. 683.

#### EARNINGS OF BANKRUPT.

See AFTER-ACQUIRED PROPERTY.

#### After Petition Subject to Eventual Discharge.

The earnings and acquisitions of the bankrupt subsequent to the filing of the petition belong to him, subject to his eventual discharge; if he does not succeed in procuring that, they remain liable to execution or attachment by his former creditors.—*Mays v. Manufacturers' National Bank of Philadelphia*, vol. 4, p. 446; *Id.*, vol. 4, p. 660.

#### EMBEZZLEMENT.

#### Prosecution for, not Suspended by Proceedings in Bankruptcy.

The pendency of proceedings in bankruptcy against a debtor does not suspend proceedings against him, in a State court, by the creditor when the bankrupt, who was the last indorser on a note, fraudulently appropriates and embezzles the proceeds thereof, nor can such creditor be re-



strained by a decree of the United States Circuit Court from proceeding, *ex delicto*, against the debtor on account of his fraud, for the reason that debts of this nature are expressly excepted from the operation of the Bankrupt Act.—*Horter et al. v. Harlan*, vol. 7, p. 238.

## ENCUMBERED PROPERTY.

See ASSIGNEE,  
COURTS,  
EXEMPTION,  
JURISDICTION,  
LEASE,  
LIENS,  
MORTGAGES,  
PROPERTY,  
SALE,  
TITLE.

## 1. Sale by Assignee.

The 20th Section of the Bankrupt Act confers authority on the assignee to make a sale of encumbered property without any order of court.

When, however, the debt claimed by the creditor is not admitted by the assignee, and cannot be agreed between them, then the assignee should resort to the proper court to ascertain it, and for a sale of the property the same time.—*McClellan*, vol. 1, p. 389.

## 2. Idem, Free from Incumbrance.

The United States District Court for Louisiana has judicial power to authorize the sale, by the assignees, of real estate surrendered by bankrupts, free and discharged of all debts secured by mortgage thereon.—*Barrow; Loeb, Simon & Co.; Winter*, vol. 1, p. 481.

## 3. Idem.

Where property encumbered by lien is sold, the purchaser takes it unencumbered, the lien being transferred from the property to the fund.—*Salmons*, vol. 2, p. 56.

## 4. Bankruptcy Court has Power to Sell Divested of Incumbrance.

A Court of Bankruptcy has power to dispose of the encumbered property of bankrupt in any manner deemed best for the interest of all concerned.—*Salmons*, vol. 2, p. 56.

## 5. Idem.

The District Court in bankruptcy may authorize the assignee to sell mortgaged property discharged of the incumbrances,

and the mortgagees will then have their lien transferred to the proceeds of sale.

The power of the court to order such a sale on petition of the assignee, does not depend on Section 25 of the Bankrupt Act, and is not limited by the proviso of that section, but may be exercised notwithstanding the mortgagee asserts a right of immediate possession of the goods, and intends to bring, or does bring, an action for the recovery of possession.

Such a sale ought not to be ordered when the substantial rights of the mortgagee are to be thereby injuriously affected.—*Foster et al. v. Ames et al.*, vol. 2, p. 455.

## 6. Void Incumbrances.

The assignee represents the creditors' rights as well as those of the bankrupt, and any incumbrance which would be void as against creditors, would be void as against him.—*Wynne*, vol. 4, p. 23.

## 7. A Private Sale Presumed Subject to Incumbrance.

Where property is encumbered it will be taken for granted that the assignee sold subject to incumbrances, but the lien creditor or creditors must be notified before the sale takes place.—*Weeks v. Whatley*, vol. 10, p. 498.

## ENDORSER.

See ACCOMMODATION PAPER,  
ACT OF BANKRUPTCY,  
COMMERCIAL PAPER,  
FRAUDULENT SUSPENSION.

## 1. As an Act of Bankruptcy.

A mere accommodation endorser cannot be adjudged bankrupt.—*Clemens*, vol. 9, p. 57.

## 2. Liability Becoming Absolute.

The liability of a bankrupt as endorser on certain promissory notes having become absolute, a creditor holding a mortgage of property from the maker thereof as security for their payment, may, nevertheless, prove the full amount of the notes against the bankrupt as endorser.—*In re Nathaniel O. Cram*, vol. 1, p. 504.

## 3. Foundation of Bankruptcy Proceedings.

Liability as endorser upon a promissory note was fixed upon N., against whom the holder, as creditor, filed a petition in involuntary bankruptcy, charging the commission of certain acts of bankruptcy.

*Held*, When an endorser's liability has become fixed, such liability constitutes a debt due and payable from the endorser, and may be made the foundation of involuntary as well as of voluntary proceedings in bankruptcy.—*Nickodemus*, vol. 8, p. 230.

#### 4. Notes Fraudulently Issued by Co-partner, Endorser having Notice.

When one partner fraudulently as to the other partner, gave notes in the name of the partnership for the payment of his individual contribution of capital, it was

*Held*, That the accommodation endorser of said notes, who had paid them (although the partner making said notes, during the course of his conversation with the said endorser, when procuring the endorsement, had represented that they were to be given for goods purchased by the partnership), was, nevertheless, under the peculiar circumstances of the case, taking into consideration the effect of the whole conversation, and of a previous interview some months before, between said partner and said endorser, at which the former had stated that "he would, perhaps, want a favor" from the latter, or words to that effect, chargeable with notice of the fraudulent issue of the notes, and had no claim upon them against the partnership estate in bankruptcy.—*In re Dunkle & Dreisbach*, vol. 7, p. 107.

#### 5. Idem, without Notice.

A, a member of a partnership offered B for endorsement his individual notes, representing, however, that they were to be used for purposes of the firm. B refusing to endorse the same, A, at B's suggestion, substituted the firm notes, which B endorsed and subsequently paid and became their holder.

*Held*, That, although it appeared that the notes, after said endorsement, were used by A to pay his separate indebtedness and in fraud of his copartners, B might recover against the firm, there being no evidence of bad faith or actual knowledge by him of the intended fraud.—*Bush v. Crawford, Assignee*, vol. 7, p. 299.

#### 6. Preference to Endorser and Other Surety.

*Held*, That although the term endorser is not specially used in the 35th Section of

the Bankrupt Act, that it was the intention of the law to make any payment or preference to an endorser or other surety fraudulent and void where the other elements in the transaction existed to give it that character.—*Bachman v. Thorner*, vol. 8, p. 118.

#### 7. When Assignee may not Compel Payment to Estate of Bankrupt.

An endorser of a note who receives none of the proceeds of the same, and whose contingent never becomes an absolute liability, cannot be compelled to pay to the bankrupt's assignee the amount of the note paid by the bankrupt to the holder, and while he, the debtor, was still carrying on business.—*Bean v. Laflin*, vol. 5, p. 333.

#### 8. Discharging Liability by Payment to Holder.

The fact that the securities were made to run directly to the sureties does not change the character of the transaction when they were obtained at the instance of the obligor. A court of equity will look at the substance rather than the form of the transaction.

The holder of a promissory note may prove it in full against the estate of the promisor, in bankruptcy, notwithstanding he has received a sum of money from an endorser, in discharge of the endorser's liability.

In such a case the holder of the note is a trustee to collect the whole note, or so much as he can collect, and to pay himself what remains due him, and the remainder to the endorser.—*Talcott & Souher*, vol. 9, p. 502.

#### 9. Joint and Individual Endorsement. Part Payment.

Where commercial paper is endorsed by a firm in its firm name, and also by the individual name of one or more members of the firm, and the makers of the note become embarrassed and bankruptcy ensues to the endorsers of the note, and the holders accept with permission of court forty per cent. from the makers, they are only entitled to dividends against the endorsers, individually, and as a firm, to an amount equal to their claim after deducting the forty per cent. received from the makers. *Howard Cole & Co.*, vol. 4, p. 571.

**10. Non-protest of Note.**

Where a note payable on demand was not presented for payment, and no demand made within four years, a protest at that time could not fix the liability of the endorser, and a claim of this nature cannot be proved against the estate of a bankrupt endorser.—*In re Crawford*, vol. 5, p. 301.

**11. May Prove Amount of Note against Maker where Holder Looks to him for Payment.**

Where the holder of a note receives part of the amount of the same from the endorser, he is entitled to prove for the whole amount against the estate of the bankrupt maker, and holds any surplus he may receive over and above the amount of the note in trust for the endorser. If the creditor omits to prove his debt, thus showing he looks to the endorser alone for payment, the endorser is entitled to come in and prove the note against the bankrupt's estate, and receive dividends upon its whole amount.—*In re Ellerhorst & Co.*, vol. 5, p. 144.

**12. Second Endorser on Original Note may Prove Claim before Extinction.**

A second endorser might prove his claim on an original note, before extinguishment, by way of security against the irresponsibility of any one personally liable thereon, but he could receive dividends only on the amount thereof which he could show that he had personally paid.—*Montgomery*, vol. 3, p. 426.

**13. Secondary Liability of.**

The liability of an endorser, after it has become fixed by protest and notice, is only a secondary liability, and one liable on such notes has not become liable as a principal debtor within the meaning of Section 33.—*In re Loder*, vol. 4, p. 190.

**ENJOINING PROCEEDINGS IN STATE COURT.****1. Suit after Commencement of Proceedings in Bankruptcy.**

*Held*, That the District Court in which the bankruptcy proceedings are pending, or the Circuit Court for that district, can, in cases where the suit in the State court is commenced, *after* the proceedings in bankruptcy are instituted, enjoin the plain-

tiff therein from further prosecuting the same.—*Markson & Spaulding v. Heany*, vol. 4, p. 511.

**2. Suit Brought before Commencement of Proceedings in Bankruptcy.**

An assignee in bankruptcy filed his petition in equity to prevent the consummation of an alleged fraudulent agreement entered into by the bankrupt and his brother-in-law, the day before the filing of the petition in bankruptcy. Previous to this an action on book account had been commenced against the bankrupt by his brother-in-law.

The court decided that the action was properly brought in the United States District Court, and that the agreement in question was fraudulent.

Perpetual injunction granted enjoining the brother-in-law to proceed no further in a suit pending in the State court against the bankrupt.—*Samson, assignee, v. Burton et al.*, vol. 5, p. 459.

**3. Sale by Sheriff.**

The United States District Court sitting in bankruptcy has power to enjoin the sheriff of a State court or parties litigant therein, from proceeding to sell property levied upon by virtue of a writ of execution issued out of such court upon a judgment obtained therein before proceedings in bankruptcy were commenced.—*Mallory*, vol. 6, p. 22.

**4. Judgment and Execution.**

The Bankrupt Court has jurisdiction to enjoin parties from proceeding to judgment and execution in a State court during the pendency of proceedings in bankruptcy.—*Penny v. Taylor*, vol. 10, p. 201.

**EQUITY.**

See ASSIGNEE,  
COURTS,  
ENCUMBERED PROPERTY,  
EXEMPTIONS,  
FRAUDULENT CONVEYANCES,  
JURISDICTION,  
PRACTICE,  
RECEIVER,  
SALE.

**1. Lien, Enforcement of.**

No equity of the general body of the bankrupt's creditors can be asserted for

their common, equal benefit, to restrain the foreclosure of a lien on the mere ground of doubtfulness of his title to the subject of his lien, and the danger of consequent sacrifice at a forced sale.—*Donaldson*, vol. 1, p. 181.

## 2. Fraudulent Disposition of Property.

The District Court, instead of issuing such an injunction under the summary jurisdiction in bankruptcy, may refuse to consider the subject unless under a distinct auxiliary proceeding in equity against such a creditor. The bill at the suit of the petitioning or any intervening creditor may then be presented in the Circuit Court in behalf of the general body of creditors until the assignment in bankruptcy, after which the assignee may be substituted or added as a complainant and if the proceedings in bankruptcy are duly prosecuted, a preliminary injunction, issued by the Circuit Court, may, in a proper case, be continued after answer, under such conditions as will preserve the priority of the creditor then restrained, if the lien of his execution should ultimately be established.—*Irving v. Hughes*, vol. 2, p. 61.

## 3. Idem.

Suits may be brought at common law, or by bill in equity, for the recovery of property in such cases, but as they must be governed by the technical rules, and be subject to the delays incident thereto, it is preferable to proceed by summary proceedings in the court of bankruptcy, that being a cheaper, speedier, and more simple mode.—*Bill v. Beckwith et al.*, vol. 2, p. 241.

## 4. Proceedings in Bankruptcy.

Proceedings in bankruptcy are in the nature of equity proceedings.—*In re Wallace*, vol. 2, p. 134.

## 5. One Having Lien on Two Funds.

The rule, that one having a lien upon two funds must so act as not to disappoint the just expectations of another having a lien on one of them only, is founded in social duty, and is never enforced to the prejudice of the double fund creditor.

Equity does not, upon the maxim that "equality is equity," deprive creditors of the fruits of diligence, but it favors and rewards diligence, and gives to creditors their full legal rights. And it does not

treat those rights as varied by the accidents of insolvency, or of death.—*Jervis v. Smith*, vol. 3, p. 594.

## 6. Usury.

When the charter of a bank prohibited it from taking a greater than a specified rate of interest, but was silent as to the effect or penalty if more than the charter rate be taken, it was held that if an illegal rate be contracted for, the effect was not to render the whole note void, but only the excess beyond the legal rate, and that at all events, if such a note be voluntarily paid, neither the borrower nor his assignee in bankruptcy can recover back the principal sum, or anything more than the *excess* beyond the legal rate of interest.

Equity will entertain a bill to recover such excess; the remedy is not exclusively at law.—*Darby's Trustees v. Boatmen's Saving Institution*, vol. 4, p. 601.

## 7. Decrees Rendered in Term Time.

Decrees in equity, in order that they may be re-examined in the United States Circuit Court, must be final decrees rendered in term time as contradistinguished from mere interlocutory decrees or orders which may be entered at chambers, or if entered in court are still subject to revision at the final hearing.—*Morgan et al. v. Thornhill et al.*, vol. 5, p. 1.

## 8. Though Adequate Remedy at Law.

A court of equity will not refuse to take jurisdiction of a cause merely on the ground that complainant has a complete remedy at law when the parties have submitted their rights to the jurisdiction of the court without objection, especially where proofs have been taken and a hearing upon the merits has been entered upon.—*Post v. Corbin*, vol. 5, p. 12.

## 9. On District Court.

Jurisdiction in equity is conferred upon the District Courts in certain cases by the Bankrupt Act now in force. *Scammon v. Cole et al.* vol. 5, p. 257.

## 10. Where Fraud or Violation of Trust Set Up.

Where the facts show that questions of fraud, trust, and partnership are all involved in the case at issue, a demurrer to a bill in equity brought by the assignee, on the ground that complainant has a complete

remedy at law, will be overruled.—*Taylor, Assignee, v. Rasch & Bernart*, vol. 5, p. 399.

#### 11. For Discovery of Particulars, when General Facts are Known.

Where the complainant knows what the goods transferred in fraud of the Bankrupt Act consisted of, he cannot claim equity jurisdiction, on the ground of discovery, because he is ignorant of their precise amounts, for he can compel the examination of the preferred creditor and obtain a full disclosure.—*Garrison, Assignee, v. Markley*, vol. 7, p. 246.

#### 12. Supervisory Power of Circuit Court.

The general superintendence conferred on United States Circuit Courts by the 1st Clause of Section 2 of the Bankrupt Act is restricted to cases involving some principle of equity.—*Woods et al. v. Bukewell et al.*, vol. 7, p. 405.

#### 13. Preferences Paid for Composition.—Deed may be Recovered.

Parties who sign composition deeds must do so in good faith. Secret preferences paid as inducements to obtain signatures of creditors to composition deeds, can be recovered by the debtor himself, or by injured creditors, or by an assignee in bankruptcy, who represents both debtor and creditor. Such recovery may be at law or in equity.—*Bean, assignee, v. Brookmire & Rankin*, vol. 7, p. 568.

#### 14. Before Appointment of Assignee.

It is eminently proper that the equitable power of the court should be set in motion by the petitioning creditor, or even by any creditor, either in voluntary or an involuntary case, before the appointment of an assignee, the action of the court being for the benefit of the creditors generally.—*Ulrich*, vol. 8, p. 15.

#### 15. An Interlocutory Decree cannot be Appealed from.

There is no specific limitation of time within which a review of summary proceedings may be sought. Such review may be applied for at any time before the supposed erroneous order is carried into execution. An order in a suit in equity for the foreclosure of mortgages as follows: That a decree of foreclosure be made in favor of A on mortgages Numbers 1 and 3,

and in favor of B on mortgage Number 2, and that the case be referred to the clerk of said court, to ascertain the sums due on said mortgages respectively, is only an interlocutory order, and therefore cannot be appealed from.—*In re Casey*, vol. 8, p. 71.

#### 16. When Litigants in State Courts will be Controlled.

The Bankrupt Court will only exercise its control over litigants in the State courts when necessary to sustain or protect an equity of the bankrupt estate, or to prevent a sacrifice of the interest of the general body of creditors to the greed of one. *In re Davis*, vol. 8, p. 167.

#### 17. Discharge is a Plea in Bar to Bill in.

A discharge under the Bankrupt Act of 1867, by a Bankruptcy Court having jurisdiction, when properly pleaded in bar to a suit in a State court, whether of law or equity, is conclusive, and cannot be attacked for fraud in obtaining it.—*Hudson et al. v. Bingham et al.*, vol. 8, p. 494.

#### 18. Plea of Bankruptcy not an Equitable Defense.

The plea of bankruptcy is not an equitable defense, but purely legal.—*Medbury v. Swan*, vol. 8, p. 537.

#### 19. Conversion of Property prior to Filing of the Petition.

An assignee in bankruptcy may bring trover for property converted prior to his appointment as assignee, if done after the filing of the petition in bankruptcy. If the conversion was prior to the filing of the petition, he must sue in equity.—*Mitchell v. McKibbin*, vol. 8, p. 548.

#### 20. Not Retained, Settled Priorities.

Where bill must be dismissed for want of equity, jurisdiction will not be retained to settle the priorities or equities between the defendants.

A court of equity may sell mortgaged premises free from incumbrances, remitting the lien holders to the proceeds, at the suits of subsequent incumbrances or other parties having right in the equity of redemption. The power in this regard, so frequently exercised in bankruptcy, is but an application there of this principle.—*Lake Superior Co.*, vol. 9, p. 208.



**21. Chattel Mortgage.**

Upon general principles of equity jurisprudence the mortgagor of chattels has an equity of redemption therein. The statutes of Massachusetts, which provide for a tender of performance, after condition broken, do not take away this right in equity, and it may be enforced in the Circuit Court of the United States, when that court has jurisdiction of the parties or the subject-matter, and this, without a previous tender of performance.—*Foster v. Ames*, vol. 2, p. 455.

**ESTOPPEL.**

See AGREEMENT,  
DOWER,  
FRAUDULENT CON-  
VEYANCE,  
HOMESTEAD.

**1. Assent to Proceedings in State Court.**

Where a debtor made an assignment under a State insolvent law, and a creditor applied to the State court to have the security of the assignees increased, this was not such an assent to the proceedings as estopped him from proclaiming that the assignment was an act of bankruptcy.—*Langley*, vol. 1, p. 559.

**2. Estops Creditor Opposing Discharge therefor.**

Where bankrupt had made an assignment of all his property for the benefit of all his creditors, and the assignee, being unable to act, the property, by written agreement of creditors, was transferred by him to another assignee, for the purpose of the original assignment; and certain of the creditors, who signed said agreement, sought to oppose the discharge of the bankrupt on the ground that he had acted in the premises with intent to evade the requirements of the statute,

*Held*, That the rules and analogies of equity jurisprudence should govern the case; and the said creditors were estopped from setting up such grounds of opposition against their declarations in the said agreement.—*In re Schuyler*, vol. 2, p. 549.

**3. The Assignee by Misrepresentation of Bankrupt.**

The bankrupts agreed to build a locomotive engine for the petitioners. They notified the petitioners that the engine was

finished and dispatched, who thereupon paid the price. No such engine then existed, but two engines, either of which would answer the contract, were afterwards finished, and one of them was delivered to a third person before the bankruptcy. At the date of the bankruptcy the other was finished, but not dispatched.

*Held*, That the petitioners had a title to the engine as against the bankrupts and their assignees by estoppel.—*Rockford, Rock Island & St. Louis R.R. Co.*; *In re McKay & Aldus*, vol. 3, p. 51.

**4. Offer to Assent to General Assignment.**

Treating with the assignee and bankrupts by creditors, with an offer to assent to the assignment if the assignee should be changed, does not estop creditors from proceeding in bankruptcy, though it is possible for creditors so to act as to be estopped in such a case.—*Spicer & Peckham v. Ward & Trow*, vol. 3, p. 513.

**5. Assent of Stockholder.**

Where stockholders were to advance money to the company in proportion to their interests, and did so advance it for some months, and all but one of them afterwards extended their loans for one year, in accordance with what the treasurer testified was an understanding at the time the loans were made, and the company paid all its trade debts as they matured, and were in good credit, whether the company could be properly considered insolvent, *quære*.

At a meeting of the stockholders, who were also the principal creditors of the company, it was voted unanimously to give a mortgage to one of the stockholders for the excess of his previous advances above his proportion. The petitioner, who was a stockholder and creditor, was present and made no objection.

*Held*, He was estopped to set up the mortgage as an act of bankruptcy by the corporation.—*Massachusetts Brick Co.*, vol. 5, p. 408.

**6. Permitting Use of Name.**

Where a partner retired from a firm, but permitted his name to remain for the benefit of the other partners, he was held liable to persons who bought the note of the new firm in ignorance of the dissolution, and in



reliance, in part, on his name.—*Krueger et al.*, vol. 5, p. 439.

#### 7. By Failure to Object to Formal Matters.

Where an insurance company fails to object to the matter of form in the proof of a loss until it is too late to remedy it, it will be estopped from setting up this defect.—*Republic Ins. Co.*, vol. 8, p. 197.

### EVIDENCE.

See ACT OF BANKRUPTCY,  
ASSIGNMENT,  
COURTS,  
DISCHARGE,  
FRAUD,  
INTEREST,  
RECORDS,  
SPECIFICATION,  
WIFE OF BANKRUPT.

#### 1. Service, Marshal's Return.

The marshal's return of service of notices to creditors, is *prima facie* evidence of due service, and conclusive until rebutted by proof *aliunde*, but if it appears from its face that due service has not been made, the first meeting must be adjourned for proper notice to be given.—*In re John Pulver*, vol. 1, p. 46.

#### 2. Return of Assignee.

The return of the assignee that no debts have been proved, or of no assets, must be produced to entitle to a discharge within six months.—*John Bellamy*, vol. 1, p. 64.

#### 3. Clerk's Certificate of the Mailing of Notices.

The certificate of the clerk that he has mailed notice to creditors on a certain day, is sufficient evidence to that effect.—*In re Wm. E. Townsend*, vol. 1, p. 216.

#### 4. Fraud in the Creation of a Debt.

Evidence of fraud in the creation of a debt sought to be introduced by a creditor, is inadmissible in proceedings in bankruptcy.—*In re Darius Tallman*, vol. 1, p. 462.

#### 5. In Proceedings by Habeas Corpus to Release a Debtor.

Evidence cannot be received to contradict the declaration and to show that no such cause of action really exists as is therein set forth.—*Devoe*, vol. 2, p. 27.

#### 6. Must Conform to the Specifications.

Where specification charges that a particular debt was paid after passage of Bankrupt Act, and the proof shows that it was paid before, and proof is offered that there were other debts not mentioned in specifications that were paid after passage of said act,

*Held*, That the creditors are bound by the specification, and such proof is inadmissible.—*Rosenfield, Jr.*, vol. 2, p. 117.

#### 7. Denial of Bankrupt.

Where it appeared solely from the testimony of bankrupt that he had made a general assignment for the benefit of creditors, and filed an application in bankruptcy on the fourth succeeding day.

*Held*, That a bare denial of the bankrupt is sufficient to show that such transfer was not made in contemplation of bankruptcy.—*Brodhead*, vol. 2, p. 278.

#### 8. Concealment.

Where specifications in opposition to the discharge of the bankrupt set forth that he had concealed property in the hands of his brother, and the only evidence in support thereof being the testimony of the bankrupt and his brother from which badges and indicia of fraud were deduced, and not overborne by the positive testimony,

*Held*, That the specifications were sustained and discharge refused.—*In re Goodridge*, vol. 2, p. 324.

#### 9. Judgment of State Court.

A judgment obtained in a State court is conclusive evidence in this court of the fact ascertained by it, and binding on the court until reversed in due course of law.—*Husman*, vol. 2, p. 438.

#### 10. Intent to Prefer.

Intent to prefer is to be proved as a fact, either by direct evidence, or as the necessary consequence of other facts clearly ascertained.—*Morgan, Root & Co. v. Mastick*, vol. 2, p. 521.

#### 11. Congress may Change Rules of.

Congress may, within the limits of federal jurisdiction modify or repeal the existing rules of evidence, and any such modification should not be left to inference, but should be the subject of clear and unambiguous enactment.—*In re Josiah D. Hunt*, vol. 2, p. 539.

**12. Parol Evidence.**

The doctrine may be taken as established, that whether the instrument relied on be signed by one only, or by both parties to it, it does not exclude parol proof of a consideration for the signature of one of the parties, additional to, and differing from, the one which it recites, unless it appears that it was the intention of the parties to state in such instrument all the consideration for such signing.

Parol proof may be received of any or all the circumstances surrounding and accompanying the transaction, tending to show the relation of the parties to each other, and to the subject-matter of the contract, and the state or condition of that subject-matter, as bearing on the intention of the parties.

In construing a clause of a contract, by which, one partner selling his interest in the firm to the other, it is agreed that the sale is subject to the indebtedness of the old firm, it is admissible to show that there were no liens on the goods of the firm for such indebtedness; that the parties well knew this, that the value of this interest of the retiring partner was three times the money paid him, and recited in the instrument of sale as the consideration; and any other matter of this character, calculated to enlighten the court as to the true intent of the parties—*Phelps v. Clasen*, vol. 3, p. 87.

**13. Preference to Creditors as a Bar to Discharge.**

Where a creditor has been preferred by bankrupt, it may not be necessary to show such creditor's fraudulent collusion in order to prevent a discharge.—*Burgess*, vol. 3, p. 196.

**14. Creditor Having Prima Facie Evidence of Fraud.**

Where a creditor has before him what the statute declares shall be *prima facie* evidence of fraud, he must, in law, be deemed to have reasonable cause to believe the existence of such fraud, until the legal presumption is overborne by opposing evidence.—*Kingsbury et al.*, vol. 3, p. 318.

**15. Fraud.**

When it is sought to affect a second vendee with fraud, such fraud must be shown, and the *mere fact* without more, that he knew that the sale by the bankrupt to the first vendee embraced all the stock of the

seller, will not make the purchase of the second vendee fraudulent in law.—*Babbitt, Assignee, v. Walbrun & Co.*, vol. 4, p. 121.

**16. Fraudulent Sale.**

Under the 35th Section of the Bankrupt Act, it was held erroneous to instruct the jury "that if a sale of property by the bankrupt was not in the ordinary and usual course of business, it was fraudulent." The instruction should have been, not that such a sale was absolutely fraudulent, but that the fact referred to was *prima facie* evidence that it was fraudulent.—*Babbitt v. Walbrun & Co.*, vol. 4, p. 121.

**17. Chattel Mortgage.**

That where a mortgage was made on a whole stock of goods, with the understanding that the mortgagors would sell the stock then on hand, and put in more from time to time as they might be able or wish to,

*Held*, That the mortgage as against creditors was not valid.

That in Wisconsin a clause in the mortgage giving the mortgagors the right to sell the stock and use the money as they might choose, would be to render the mortgage void as to the whole stock.

When these facts appear on the face of the mortgage, it should be held void by the court; but when it appears by evidence *aliunde*, the court should instruct the jury that such understanding would avoid the mortgage.—*Kahley et al.*, vol. 4, p. 378.

**18. Wife of Bankrupt.**

Upon a motion to set aside the discharge granted to a bankrupt, the wife of the bankrupt cannot be required to testify as a witness against her husband.—*Tenny & Gregory v. Collins*, vol. 4, p. 477.

**19. Transaction out of Ordinary Course of Business.**

Where a transaction that contemplates the securing of a debt is out of the ordinary course of business, the Bankrupt Act declares it to be *prima facie* fraudulent.—*Martin, Assignee, v. Toof, Phillips & Co.*, vol. 4, p. 488.

**20. Payments by Debtor.**

Payments made by the debtor to the petitioning creditors are material facts on the issue in denial of bankruptcy, and the debtor can introduce evidence of such pay-

ments without a special traverse of the amount of his indebtedness.—*P. Skelley*, vol. 5, p. 216.

#### 21. Examination of Debtor Exemplified, Copy of.

An exemplified copy of an examination of the debtor, taken under the laws of the State of New York, under supplemental proceedings upon a judgment, was offered, for the purpose of proving admissions of the debtor.

*Held*, That under the act of Congress approved May 26, 1790, such copy was proper evidence, such examination being "judicial proceedings" within the meaning of said act.—*In re Rooney*, vol. 6, p. 163.

#### 22. Declaration of Bankrupt.

The declarations of the bankrupt are admissible as evidence, as the declarations of a co-conspirator in an attempt to defraud and as part of the *res gestæ*.—*Samson, assignee, v. Blake*, vol. 6, p. 410.

#### 23. Preservation.

The payment of notes having been guaranteed, the court orders that the assignee preserve the notes and guaranties thereon intact, that they may be used as evidence if required in proceedings by the purchaser against the guarantor. The notes having been purchased from bankrupt after petition in bankruptcy was filed.—*Lake*, vol. 6, p. 542.

#### 24. Procuring Property to be Taken.

Procurement to take in execution may be inferred from such relationship between the debtor and creditor and apparent concert of action on their part as would ordinarily be incompatible with any other intention on the part of the debtor than that of giving a preference to the creditor.—*Dunkle & Dreisbach*, vol. 7, p. 72.

#### 25. Copartnership.

Two firms shared in a certain venture, and kept an account at bank in the name of one firm, adding the word "Co.," and so signed the cheques.

*Held*, That these cheques did not establish a copartnership between the two firms, and that the holder of one of the cheques thus signed could not file a petition in bankruptcy against the members of both firms.—*Warner et al.*, vol. 7, p. 47.

#### 26. Adjudication of Bankrupt.

An adjudication of bankruptcy *in invitum* is not conclusive evidence as against such execution creditor as to the allegations in the petition for adjudication, found to be true by such decree.—*Dunkle & Dreisbach*, vol. 7, p. 72.

#### 27. Procuring Property to be Taken.

If a debtor directly or indirectly assists or facilitates the obtaining of judgment on which an execution has followed, this may be evidence in support of an allegation that he has committed an act of bankruptcy by procuring or suffering his property to be taken in execution.—*Woods*, vol. 7, p. 126.

#### 28. Copartnership.

Participation in the profits of a business is presumptive or primary proof that the participator is a partner in such business, and in the absence of other proof is sufficient evidence thereof; but such presumption may be overcome by showing that such profits were received by the party simply as wages for services performed, or interest for money loaned to the person carrying on such business.—*Francis & Buchanan*, vol. 7, p. 359.

#### 29. Secret Partner.

The fact that a purchaser afterwards proved his claim in bankruptcy against the signers of a note, goes to show that he understood them alone to be liable and discounted it upon their responsibility, and not upon that also of their secret partners.—*Munn*, vol. 7, p. 468.

#### 30. Service of Injunction Order Evidence of Demand of Assignee.

An injunction order, and proof of its service, is competent evidence to show that the debtor making payment had notice of the demand of the assignee.—*Babbitt, Assignee, v. Burgess*, vol. 7, p. 561.

#### 31. Detached Cheque—Books of Account.

A detached cheque is admissible in evidence on the question as to whether the bankrupt has kept proper books of account; such cheque having once formed a part of the book, and, together with the stump, shows just how the book was kept.—*In re Brockway*, vol. 7, p. 595.

#### 32. Res Adjudicata.

A creditor, opposing the discharge of a bankrupt, set up as one of the specifica-

tions, that the bankrupt had fraudulently, etc., disposed of a certain property within, etc., contrary to the provisions of the Bankrupt Act. On a trial of these specifications the court held the specification *not proved* as a matter of fact.

Subsequently, the assignee in bankruptcy sued the transferee of the property, in the State court of Pennsylvania, setting up in substance the same facts as alleged in the specifications. The transferee sought to enjoin the assignee on the ground that the case was "*res adjudicata*" and on the further ground that the suit was not commenced within two years, etc.

*Held*, It is not proper to try the merits of the question in this summary way, but the party will be left to the decision of the State court on a final hearing with all the evidence before it; that the former proceeding was *res inter alios acta* and in no way binding upon the assignee.—*Penn et al.*, vol. 8, p. 93.

### 33. Intent to Prefer—Reasonable Cause.

To establish an intent to prefer a creditor, it is sufficient for the assignee to show that the bankrupt, while insolvent, paid or secured this creditor in full without making adequate provisions for the other creditors, and this will place upon the defendant the *onus* of satisfying the court, that at the time of making the transfer or payment the bankrupt did not know he was insolvent.

It is sufficient proof that the creditor had reasonable cause to believe that the debtor intended to prefer him to show that at the time of receiving the preference he had reasonable cause to believe the debtor insolvent, and that the debtor knew of his insolvency.—*Stobaugh, Assignee, v. Mills & L. Fitch*, vol. 8, p. 361.

### 34. Bank Cashier—Paper Discounted.

The cashier of a bank is presumed to know something of the character of paper discounted by him, and when notes are purchased of street brokers, the presumption is that the cashier knew they were dealing for others, and that the notes they negotiate are given to them for the express purpose of raising money on them.—*Tiffany et al.*, vol. 9, p. 245.

### 35. Discharge.

A discharge under the Bankrupt Act of

1867, by a Bankruptcy court having jurisdiction, when properly pleaded in bar to a suit in a State court, whether of law or equity, is conclusive, and cannot be attacked for fraud in obtaining it.—*Hudson et al. v. Bingham et al.*, vol. 8, p. 494.

### 36. Notice of Act of Bankruptcy to Creditor.

Notice to creditor of an act of bankruptcy does not affect a transfer to him, otherwise than as it tends to show that he had reason to believe that such transfer was made in fraud of the Bankrupt Act.—*Catlin*, vol. 9, p. 342.

### 37. Negotiations Preceding Compromise.

It is proper to admit evidence as to the negotiations between the petitioning creditors and the respondents preceding the consummation of a compromise between them, and it is proper to charge the jury that they could use this testimony only as it bore upon the fact whether an assignment was made, and if so, what was its character.—*Jelsh & Dunnebacke*, vol. 9, p. 412.

### 38. In Proving Consideration of Commercial Paper.

In the proof of commercial paper acquired before maturity, the holder need only prove the consideration paid by him; it is unnecessary for him to show that the maker received any consideration.—*In re Lake Superior Ship Canal, etc., Co.*, vol. 10, p. 76.

### 39. Creditor Must Prove Debtor's Intent to Prefer.

The *onus probandi* is on the creditor to show that the debtor procured his property to be taken on legal process, with intent thereby to give preference.—*In re Dwight B. King*, vol. 10, p. 103.

### 40. Whether Words are Used as Descriptio Personarum.

An obligation given by an officer of a corporation, signing his own name and affixing his official position as *descriptio personarum*, may be shown by parol evidence to be obligation of the corporation.—*Southern Minnesota R. R. Co.*, vol. 10, p. 86.

### 41. Rent.

Where premises under a lease are taken and condemned to the use of a railroad company, and damages are paid by the company to the tenant, upon the basis that

his obligation to pay rent during the remainder of the term will continue, which obligation he expressly recognizes when he receives the money, and which he partly performs; the landlord, on the bankruptcy of the tenant, will be allowed to prove, as a claim against the estate, the amount of the unpaid installments of rent, at their value at the date of the bankruptcy.—*Clancy*, vol. 10, p. 215.

#### 42. Official Character of Public Officer.

It is not error to admit in evidence the assignee's bill of sale to prove the transfer of the account sued on to the intervenor. It is not necessary in many instances to prove the official character of public officers, nor to prove an order of the District Court directing the assignee to sell the bankrupt's assets.—*J. P. Morris et al. v. H. Swartz*, vol. 10, p. 305.

#### 43. Assignee's Bill of Sale.

The assignee's bill of sale may be admitted in evidence to prove the transfer of the account sued on to the intervenor.—*Morris et al. v. Swartz*, vol. 10, p. 305.

#### 44. Meeting of Board of Directors.

The only evidence of the meeting and action of the directors of a corporation, as a board in making a deed, is the "record" required to be kept by the secretary.—*St. Helen's Mill Co.*, vol. 10, p. 415.

### EXAMINATION.

See ASSIGNEE,  
BANKRUPT,  
CORPORATION,  
COST AND FEES,  
COUNSEL,  
PRACTICE,  
REGISTER,  
TESTIMONY,  
TRUSTEE,  
WITNESS.

#### EXAMINATION—

- I. *Witnesses*, p. 387.
- II. *Wife of Bankrupt*, p. 388.
- III. *Of Bankrupt*, 389.

#### I. *Witnesses*.

##### 1. Witness Cannot Have Attending Counsel.

A witness summoned by the creditor cannot have attending counsel at his ex-

amination. Objection by the counsel of the bankrupts to the examination of the witness, on the ground that he had been enjoined at the suit of the assignee in respect of the bankrupts' property, and been made thereby a party to the bankruptcy proceedings, overruled.—*In re Robert Feinberg, Martin Steenbock, and Gustav Pessels*, vol. 2, p. 425.

##### 2. Expenses of, by whom Paid.

When witnesses are produced before the Register, each party must pay for the direct examination of his own witnesses, and for such cross-examination as he may make of the witnesses of the adverse party.—*Scotfield v. Moorhead*, vol. 2, p. 1.

##### 3. Notice to Bankrupt.

Where an examination of bankrupts by creditors had been commenced and adjourned over, and the assignee summoned a witness in the meantime for examination as to bankrupt's property, without notice to bankrupts,

*Held*, It was not necessary to give notice to bankrupts of time and place of examination of witness, and the same could be proceeded with without reference to the examination by creditors.—*In re Samuel W. Levy & Mark Levy*, vol. 1, p. 107.

##### 4. Creditor Residing in Different District.

A creditor residing in Boston proved his debt against the bankrupt's estate, and an order was made that he appear before the Register, to be examined touching his debt; failing to appear in obedience to the order, a motion was made to attach him.

*Held*, That when a creditor has proved his debt, he is subject to the jurisdiction of the court, irrespective of his place of residence.

That when he disobeys the order to appear and be examined, the court can strike out his claim.

That he is not entitled to witness fees for attendance under this order; if, however, he cannot personally attend in this district without hardship, the court will provide for his being examined before a Register in the district where he resides.—*In re Morris Kyler*, vol. 2, p. 650.

##### 5. Register May Allow Order for.

A Register in bankruptcy can allow the



order (Form 45) for the examination of the bankrupt under Section 26 of the Bankrupt Act.—*In re Lanier*, vol. 2, p. 154.

#### 6. After Bankrupt Files Petition for Discharge.

The time to examine witnesses does not expire by the bankrupt filing his petition for a discharge.—*Seckendorf*, vol. 1, p. 626.

#### 7. Register Cannot Decide Relevancy of Questions.

In the examination of a witness, the Register has no power to decide on the materiality or relevancy of questions.—*In re S. M. & M. Levy*, 1 N. B. R., 105; *Bond*, vol. 3, p. 7.

#### 8. Witness Cannot Refuse to be Sworn.

A witness cannot rightfully object to being sworn, or refuse to be examined upon any matters which shall be within the subjects mentioned in Section 26 of the United States Bankrupt Act of 1867.—*In re Blake*, vol. 2, p. 10.

#### 9. Creditor may be Examined not as a Witness, but as a Party to the Proceedings.

When a creditor presents his claim for probate, he at once subjects himself and his claim to the power and jurisdiction of the court, and becomes subject to its orders within the provisions of the Bankrupt Act; among which is the provision that the court may examine such creditor concerning the debt sought to be proved. He is, therefore, so examined as a party to the proceedings, and is in no sense a "witness;" hence the refusal of the assignee to pay witness fees under such circumstances must be sustained.—*In re S. Padlock*, vol. 6, p. 396.

#### 10. Oral Examination.

The examination of witnesses orally before the court is no ground for reversal of an order. Order affirmed.—*Samson, Assignee, v. Clark & Burton*, vol. 6, p. 403.

#### 11. Subject-matter of.

On examination, under Section 26 of the Act, a witness may be examined fully, sub-

stantially as under a reference upon a creditor's bill, or in supplementary proceedings under the code.—*Pioneer Paper Co.*, vol. 7, p. 250.

### II. Wife of Bankrupt.

#### 12. Order for Examination.

The order for bankrupt's wife to attend and be examined—Foster, No. 45—is in the nature of a summons.—*Bellamy*, vol. 1, p. 64.

#### 13. Entitled to Witness Fees.

The wife of a bankrupt is not bound to appear and be examined, unless she is paid the usual and proper witness fees. The penalty for disobedience of the wife to attend and be examined is visited upon the bankrupt by refusing him a discharge.—*In re Andrew P. Van Tuyl*, vol. 2, p. 70.

#### 14. Contempt.

The wife of a bankrupt may be summoned and compelled to attend and be examined as any other witness, and may be punished for contempt if she refuses to answer.—*Woolford*, vol. 3, p. 444.

#### 15. Vexatious Examination by Assignee.

Where an assignee, who was also a creditor, neglected to make his report on the return day of the order to show cause why bankrupt should not be discharged, but subsequently appeared before the Register and applied for an order for examination of bankrupt's wife,

*Held*, That such order should be refused, as it did not appear to have been made in good faith.—*In re Moses Selig*, vol. 1, p. 186.

#### 16. Prima Facie Case Necessary.

It is the practice of this court to order an examination of the bankrupt's wife only when a *prima facie* case is made out by affidavit. The wife may be examined when on reasonable grounds she is suspected of having, or of having had property in her possession, which should have been surrendered to the creditors, or to have participated actively in any other fraud upon the statute.—*In re Joseph F. Gilbert*, vol. 3, p. 152.



III. *Of Bankrupt—*

1. *After Acquisitions*, p. 389.
2. *Application for*, p. 389.
3. *Arrangement, Proceedings in*, p. 390.
4. *Certifying Questions*, p. 390.
5. *Conduct of Examination*, p. 391.
6. *Contempt*, p. 392.
7. *Cost and Fees*, p. 392.
8. *Counsel*, p. 392.
9. *Counter-Claim*, p. 393.
10. *Criminating Questions*, p. 393.
11. *Cross-Examination*, p. 393.
12. *Debts*, p. 393.
13. *Discharge*, p. 394.
14. *Final Examination*, p. 395.
15. *Gaming*, p. 395.
16. *Order*, p. 395.
17. *Wife's Separate Estate*, p. 395.

1. *After-Acquired Property.*17. **Not Examinable as to.**

Bankrupt being under examination, was asked by creditors and assignee: "Have you acquired any property since you filed your petition, or since you were declared a bankrupt?" Bankrupt objected. Court sustained objection, and excluded the question.—*Samuel W. & Mark Levy*, vol. 1, p. 136.

18. **Unless Connection Shown with Estate.**

A bankrupt cannot be examined as to property acquired or business done after the date of filing his petition in bankruptcy, provided he states that the same has no connection with, or reference to, his estate or business prior to said date.—*In re Isaac Rosenfield, Jr.*, vol. 1, p. 319.

19. **Where and how Acquired.**

Bankrupt was under examination by his assignee, and refused to answer certain questions touching his acquirement and possession of considerable amounts of money after proceedings in bankruptcy.

*Held*, The questions were proper and relevant as directed to the point of inquiry, when and how did the bankrupt acquire the same, and must be answered.—*McBrien*, vol. 3, p. 344.

2. *Application for.*(A.) *By Assignee.*20. **Petition Need not be Verified.**

The application of an assignee for the examination of the bankrupt under the 26th Section of said act need not be verified by affidavit, nor is it necessary that the application should specify the matters on which it is proposed to examine the bankrupt, or the particular reasons for the same.—*Lanier*, vol. 2, p. 154.

21. **Idem.**

It is not necessary that the application of assignee for the examination of bankrupt should be under oath. A bankrupt may be called upon at any time to submit to an examination, and as the assignee is a *quasi* officer of the court it is only necessary that the court should be satisfied of the *bona fides* of his application.—*McBrien*, vol. 2, p. 197.

22. **Idem. After Discharge.**

After a discharge has been granted, the power or means to discover assets by the examination of the bankrupt, under Section 26, no longer remains, and that the power of examination will not be revived until the discharge has been set aside. Proceedings for contempt discharged.—*G. C. Jones*, vol. 6, p. 386.

(B.) *By Creditors.*23. **Verified Petition Showing Good Cause.**

A creditor, to obtain an order according to form Number 45 for the examination of the bankrupt, under Section 26 of the act, must apply for such order by petition or affidavit, and show good cause for granting the same.—*In re Julius L. Adams*, vol. 2, p. 95.

24. **Made after Unreasonable Delay.**

Where creditors applied for an order that bankrupts attend and submit to an examination under Section 26, and it appears that ample opportunity had previously been given them to so examine them,

*Held*, That the application for examination after the expiration of time allowed to amend specification was unreasonable, as no cause for doing so was shown by affidavit.—*In re Isidor & Blumenthal*, vol. 1, p. 264.

**25. Although previously Examined by other Creditors.**

Every creditor has a right, under Section 26 of the Bankrupt Act of 1867, to examine the bankrupt on oath as to the matters specified in that section. The fact that one creditor has examined the bankrupt is no reason for withholding the privilege from another.—*Julius L. Adams*, vol. 2, p. 272.

**26. Full Opportunity for Examination, None for Annoyance.**

It is the duty of the Register to protect the bankrupt from annoyance, oppression, and mere delay, while at the same time full and fair opportunity is to be allowed to the creditors to inquire into the matters specified in the 26th Section of said act.—*In re Julius L. Adams*, vol. 2, p. 272.

**27. Discretion of Register in Granting Order for.**

Where an order for examination of bankrupt was claimed by certain creditors through their counsel, the application for said order being neither in writing nor under oath—the bankrupt had previously applied for his discharge,

*Held*, The Register, in the exercise of his discretion (Section 26), thought proper to grant the order, without requiring a petition or affidavit duly verified, showing good cause for granting the same. Nothing appears to show that that discretion was improperly exercised, and the order must stand. The time to examine the bankrupt does not expire with the making of his application for discharge.—*In re Andrew J. Solis*, vol. 4, p. 68.

**28. When Motion Pending to Expunge Proof of Claim.**

Where creditors' claims have been protested against, if duly proved, the creditors representing those claims will be entitled to an order according to Form No. 45, under Section 26.—*In re Belden & Hooker*, vol. 4, p. 194.

**3. Arrangement (Proceedings in).**

**29. After Appointment of Trustees.**

Notwithstanding the appointment of a trustee and committee of creditors under Section 43, the court may, on application of a creditor, require the bankrupt to sub-

mit to an examination.—*Jay Cooke & Co.*, vol. 10, p. 126.

**4. Certifying Questions.**

**30. Must Show Connection Preceding Interrogatories.**

Where question was put the bankrupt under examination which he refused to answer,

*Held*, No decision could be given as to the question raised, because the certificate did not disclose what interrogatories preceded the one which witness refused to answer.—*In re Charles G. Patterson*, vol. 1, p. 161.

**31. Objection by Bankrupt to Statement, Disposition of his Property.**

Bankrupt filed his petition to be adjudicated a bankrupt on the 25th of June, 1867, and was so adjudicated on September 12th, following. During his examination before the Register by creditors, he testified to receiving \$5,000 about August 25, 1867, and being asked what became of it, objected to the question, which objection the Register overruled. The bankrupt requested that the question so raised be adjourned for the decision of the court, and the Register declined. A special case was thereupon made and submitted by the attorneys of the bankrupt and creditors respectively.

*Held*, That the Register was correct in declining to adjourn the question into court as an issue of law.—*In re Charles G. Patterson*, vol. 1, p. 125.

**32. Register not to Pass on Validity of Questions.**

Where questions were put to bankrupt on his examination touching the acquirement of certain moneys, to which bankrupt objected, and the Register overruled his objection,

*Held*, That Register had no power to decide on the validity of objections, or on the admissibility of the questions.—*In re Charles G. Patterson*, vol. 1, p. 147.

**33. Objections to Questions before Register.**

In the examination of a bankrupt by creditors, the Register will pass upon questions objected to, and formal exceptions being taken, he will, at the close of the testimony, entertain motion to strike

out answers or admit excluded questions, and certify the questions to the court.—*In re Isidor Lyon*, vol. 1, p. 111.

#### 34. *Idem*.

In an examination of bankrupts by creditors under Section 26 of the Act, where questions are objected to, the Register will pass upon the same, and permit the parties to take formal exceptions to his rulings. At the close, a motion to strike out specified points, or to have excluded questions answered, will be entertained, and the questions be certified for decision by the judge, and proceedings thereafter be had in accordance with such decision.—*In re Samuel W. Levy & Mark Levy*, vol. 1, p. 105.

#### 35. Submitting Objection to Examination, to Register's Decision, Waives the Right to have the Question Adjourned into Court.

Scheduled creditors filed proof of debt, and made motion for an order to examine bankrupt, before the day of first meeting of creditors. Bankrupt objected. Register granted motion after argument, and bankrupt moved the question be adjourned for decision by the court. Questions and issue were tendered, but the creditors declined to receive same or join issue. Register then declined to grant motion of bankrupt, who objected to his action, and thereupon requested questions to be certified to the judge.

*Held*, That the objection of the bankrupt to the motion for his examination raised an issue of law, which the Register should have adjourned for the judge's decision, without any request; but such adjournment was a proceeding that might be waived, and it was waived by the bankrupt submitting the matter upon argument for the Register's decision, which disposed of it. No obligation rested on the Register after such decision to adjourn the points of the bankrupt into court.—*Patterson*, vol. 1, p. 100.

#### 5. Conduct of Examination.

#### 36. Meeting at Appointed Time.

Where creditor made default on day appointed for continuing the examination of the bankrupt, but appeared on a subsequent day appointed, whereupon the bank-

rupt failed to appear, but both appeared on an appointed day thereafter, and the bankrupt objected to any further examination,

*Held*, That there was no sufficient reason for the court to interfere with such examination.—*In re Robinson & Chamberlain*, vol. 2, p. 516.

#### 37. Prior to Adjudication.

Where a sum of money and sundry articles of jewelry in the possession of one of the bankrupts were refused delivery to the marshal on his making demand for same, and a motion is made for the examination of said bankrupt to show what he had done with said property, the bankrupt's plea was that reasonable time had not been allowed him.

*Held*, The defendant is liable to examination after due service of copies of the petition, and the orders in the case, although final adjudication had not been had.—*Bromley*, vol. 3, p. 686.

#### 38. *Idem*.

After petition filed, and before adjudication, the court may require an alleged bankrupt to submit to examination; but the exercise of this power should be carefully watched, and never used further than is necessary to protect and preserve the property, so as to subject it to the further action of the court.—*Salkey & Gerson*, vol. 9, p. 107.

#### 39. Notice to Bankrupt of Witness's Examination.

Where an examination of bankrupts by creditors has been commenced and adjourned over, and the assignee summoned a witness in the meantime for examination as to bankrupt's property, without notice to bankrupt,

*Held*, It was not necessary to give notice to bankrupts of time and place of examination of witness, and the same could be proceeded with without reference to the examination by creditors.—*In re Samuel W. Levy & Mark Levy*, vol. 1, p. 107.

#### 40. Register Cannot Decide Competency or Materiality of Question.

The Register has no power to decide on the competency, materiality, or relevancy of any question, and has, therefore, no power to exclude or overrule any question.—*Rosenfeld*, vol. 1, p. 319.

**41. Of Bankrupt—Of Witness.**

The examination of a bankrupt must be regarded in the nature of the examination of a witness, there is no good reason why any one possessing information may not be required to submit to an examination.—*Blake*, vol. 2, p. 10.

**42. Bankrupt Must Answer as to Interest he may possibly Have.**

A bankrupt must answer questions put to him in relation to property in which it is shown that he might possibly have an interest.—*In re Bonesteel*, vol. 2, p. 330.

**43. Bankrupt Examined Fully.**

On examination under Section 26 of the Act, the bankrupt may be examined fully, substantially as under a reference upon a creditor's bill, or in supplementary proceedings under the code.—*Pioneer Paper Company*, vol. 7, p. 250.

**44. Creditors Cannot Object to Questions Put by Another Creditor.**

Other creditors have no right to intervene and interpose objections to questions put in the course of examination of a bankrupt by one creditor.—*In re Stuyvesant Bank*, vol. 7, p. 445.

**45. Examination Reduced to Writing.**

The party examining the bankrupt has a right to have the examination reduced to writing, and sworn to and subscribed by the witness.—*In re Jackson*, vol. 8, p. 424.

**46. Notice.**

It is the duty of the debtor to be ready for examination upon due notice, but he need not notify the creditor when and where the examination is to be had.—*Litfield*, vol. 3, p. 57.

**47. Debtor must Attend on Reference as to Proportion of Creditors.**

On a reference to ascertain whether the petitioning creditors constitute the requisite proportion, the debtor must attend on the reference and submit to an examination, if desired, as to all matters pertinent to the issue.—*In re Jacob Hymes*, vol. 10, p. 433.

**6. Contempt.****48. Failure to Answer Proper Questions.**

Where the bankrupt is upon his examination, and fails to answer proper questions propounded, he will be compelled to answer by the court.—*Holt*, vol. 3, p. 241.

**49. New Examination.**

Where the examination of a bankrupt under a previous order had been abruptly terminated by non-attendance of assignee's counsel, and an order for new examination was taken by assignee, under which the bankrupt refused to testify,

*Held*, That the bankrupt was wrong in refusing to testify.—*Van Tuyl*, vol. 2, p. 70.

**50. Refusing to Answer under Advice of Counsel.**

The bankrupt, under the advice of counsel, must take the risk of deciding whether he will answer or not.

If the creditor chooses, he can, upon said refusal, apply to the district judge, to punish the party as for contempt of court, and upon said application, the said judge will decide whether or not the question is a proper one.—*Rosenfield*, vol. 1, p. 319.

**51. Bankrupt Failing to Attend by Reason of Sickness.**

A bankrupt who fails to attend on the adjourned day of his examination, by reason of sickness, cannot be punished for contempt of court.—*In re Josiah Carpenter*, vol. 1, p. 299.

**7. Cost and Fees.****52. Bankrupt not Entitled to Witness Fees.**

A bankrupt is not entitled to witness fees on his appearance for examination before the Register.—*In re William Okell*, vol. 1, p. 303.

**53. Register not Entitled to Fee for Order.**

Application was made for an order to examine the bankrupt on behalf of a creditor, and the creditor objecting to the charge of a fee of \$1, by the Register for such order,

*Held*, That such an order was not an "order where notice was required to be given" under General Order 30, nor was it an application for any meeting, under Section 47, and the Register was not entitled to such fee.—*James Macintire*, vol. 1, p. 11.

**8. Counsel, Right to Consult.****54. Discretionary with Examining Magistrate.**

A bankrupt under examination has no

right to consult with his attorney before answering, except when the examining magistrate shall see good cause for allowing it.—*In re Edward P. Tanner*, vol. 1, p. 316.

**55. Idem.**

A bankrupt cannot consult with his counsel or with any one while on the witness stand as to the way or manner he shall answer questions put to him, except when the Register in charge of the case shall, in the exercise of due discretion, see cause therefor.—*In re Curtis Judson*, vol. 1, p. 364.

**56. Idem.**

In the examination of a bankrupt, he may not consult with his counsel before answering interrogatories, except by permission of the Register.—*In re John C. Collins*, vol. 1, p. 551.

**57. Idem.**

A bankrupt under examination may consult with his counsel in the discretion of the Register.—*Patterson*, vol. 1, p. 150.

**58. Idem.**

Whether the bankrupt should be allowed to consult counsel upon his examination, must be determined by the Register, according to the circumstances of each particular case.—*Lord*, vol. 3, p. 243

**9. Counter Claim.**

**59. Does not Justify Refusal to be Examined.**

So long as a creditor's debt stands proved and unimpeached, a claim made by the bankrupt before the Register that any indebtedness that ever existed from him (said bankrupt) to said creditor was offset and extinguished by a counter indebtedness, furnishes no ground for a refusal, on the part of the bankrupt, to be sworn and examined on the application of such creditor.—*Kingsley*, vol. 7, p. 558.

**10. Criminating Questions.**

**60. May Decline Answering.**

The bankrupt may decline to answer, if by so doing he would criminate himself.—*Jacob A. Koch*, vol. 1, p. 549.

**61. Contra.**

The defendant cannot claim the protection of the court, on the ground that if he

answers questions as to what he had done with said personal property he will criminate himself, etc.—*Bromley*, vol. 3, p. 686.

**62. Idem.**

Where bankrupt refused to answer certain questions on the ground that they would criminate or degrade him,

*Held*, The assignee is entitled to the information; and the questions should be answered by bankrupt.—*Richards*, vol. 4, p. 93.

**11. Cross-Examination.**

**63. May be Cross-Examined by his Counsel.**

A bankrupt on examination may be cross-examined by his own counsel.—*In re Stephen B. Leachman*, vol. 1, p. 391.

**64. Collateral Matters.**

A bankrupt having testified that he is not the owner of certain property, questions relating to the identity of the owner, duration, extent, and character of the ownership of that property, are irrelevant. Questions relating to the value of furniture and fixtures, and whether a certain person or persons do not own certain property, are, unless the bankrupt is in both instances the owner, irrelevant. All questions which on their face relate to property that does not belong to the bankrupt, are irrelevant.—*In re Andrew P. Tuxl*, vol. 1, p. 636.

**65. Questions May be Repeated at Different Examinations.**

It is no sufficient excuse for not answering a question put to the bankrupt that he has already replied to it at a former examination held at the instance of some other creditor or the assignee.—*In re H. Vogel*, vol. 5, p. 393.

**12. Debts.**

**66. Fraudulently Created, of Examining Creditor.**

A bankrupt on his examination before the Register, may be examined to show that the debt to the examining creditor was fraudulently contracted.—*In re Jacob A. Koch*, vol. 1, p. 549.



**67. Irrelevant, because Unaffected by Discharge.**

Certain creditors of a bankrupt filed their proof of debt, alleging that the debt was created by fraud. On the examination of the bankrupt they proposed to inquire into the alleged fraud.

*Held*, That such inquiry was irrelevant; that a discharge in bankruptcy does not discharge a debt fraudulently contracted.—*Wright*, vol. 2, p. 142.

**68. Barred by Statute of Limitations when.**

Bankrupt set forth in his schedules a debt due a creditor which was barred by the Statute of Limitations of the State in which both resided, and wherein the debt had been contracted. On the creditor seeking to examine the bankrupt, he objected.

*Held*, That the debt was provable in bankruptcy, unless it were shown to be barred throughout the United States, and that the creditor had a right to examine the bankrupt under Section 26.

*Semble*, That under Section 22 any creditor-claimant may apply for the examination of the bankrupt whether he shall have proved his debt or not, while under Section 26 only creditors who have proved their debts may so apply.—*In re James T. Ray*, vol. 1, p. 203.

**69. Created by Fraud.**

A bankrupt cannot be examined for the purpose of showing that the debt was created by fraud.—*In re Isaac Rosenfield*, vol. 1, p. 575.

**13. Discharge.****70. Adjourned Pending Examination.**

The pending of the examination of a bankrupt is good cause, under General Order 6, for adjourning the hearing on the return of an order to show cause, and such adjournment can be made without requiring creditors to file appearance under General Order 24, objecting to discharge.—*In re John Thompson*, vol. 1, p. 323.

**71. To Support Specification against Discharge.**

On filing the specifications in opposition to a bankrupt's discharge, the hearing upon the petition is at once transferred into court by Section 4 of the Bankrupt Act; therefore, there cannot be any examination of the bankrupt by the creditors before a

Register on the application by the bankrupt for a discharge. If creditors desire a further examination of the bankrupt before a Register, to be used by them in opposing his discharge, they must proceed under Section 26 of said act.—*In re S. F. & C. S. Frizelle*, vol. 5, p. 119.

**72. Cannot be had after Discharge.**

After a discharge has been granted, the power or means to discover assets by the examination of the bankrupt under Section 26, no longer remains, and the power of examination will not be revived until the discharge has been set aside.—*Jones*, vol. 6, p. 386.

**73. Two Years after Discharge**

The fact that the bankrupt has received his discharge more than two years ago, is not a good objection to his being examined in accordance to the requirements of Section 26 of the Bankrupt Act.—*In re Heath & Hughes*, vol. 7, p. 448.

**74. Idem.**

An order and summons were issued requiring a bankrupt to appear and be examined as a witness. Under the advice of counsel he declined to be sworn until after the decision of the court. The preliminary objections were substantially as follows:

*Second*. That the name of the assignee is being used for the purpose of extorting a settlement of stale claims against the bankrupt, more than two years after he has received his discharge, when is it too late to vacate it.

*Fourth*. That the bankrupt cannot now be examined for the purpose of instituting or aiding a proceeding to vacate his discharge.

*Held*, That the second and fourth objections are well taken.—*In re Dole*, vol. 7, p. 538.

**75. Idem.**

The Register, four years after discharge, issued an order requiring a bankrupt to submit to examination touching property claimed to have been fraudulently concealed. The court set the order aside for want of jurisdiction to grant it.—*Nathaniel Dole*, vol. 9, p. 193.

**76. Idem. After Discharge not Subject.**

After a bankrupt is discharged from his debts, he is not subject to examination under Section 26 of the act, on the appli-



cation of the assignee.—*Witkowski*, vol. 10, p. 208.

#### 14. *Final Examination.*

##### 77. *At Third Meeting.*

At the last of the public meetings before the Register, or at any adjourned session of it, the bankrupt's examination may be finished; and if no assets have been discovered, any business performable under the 27th and 28th Sections of the act may also be transacted.—*Sherwood*, vol. 1, p. 345.

##### 78. *Previous to Discharge.*

Before a bankrupt can be discharged he must be examined by the Register upon all matters touching his bankruptcy; the assignee or creditors may appear at such time and examine the bankrupt; should they desire any other time to examine him, the proper way is to petition the court for that purpose. If the application is made directly to the judge, instead of through the Register, it is not necessary that such application be sustained by any certificate of the Register as to the propriety of granting such order.—*In re Brandt*, vol. 2, p. 345.

#### 15. *Gaming.*

##### 79. *After Bankruptcy Improper.*

Where a bankrupt, under examination, on being asked whether he had lost property at gaming, objected to the question, the Register overruled his objections, but the bankrupt refused to answer.

*Held*, The question was broad enough to cover time subsequent to commencement of proceedings in bankruptcy, and was therefore improper.—*In re Charles G. Patterson*, vol. 1, p. 152.

#### 16. *Order.*

##### 80. *Order for Bankrupt or Wife to Attend.*

The order for bankrupt or his wife to attend and be examined (Form No. 45), is in the nature of a summons, and may be furnished in blank in the registers, signed and sealed by the clerk.—*In re John Belamy*, vol. 1, p. 64.

##### 81. *Idem.*

A bankrupt having objected to an ex-

amination before a Register in bankruptcy upon the following grounds:

That the Register has no authority to grant an order for the examination of a bankrupt, either by statute or rule.

That the order, if granted, as it recites on application, should have been on a verified application in writing.

That the order is on its face defective, in that it does not purport to be "on the application of a creditor who has proved his claim."

*Held*, That the examination is correct. Third objection is frivolous.—*Vetterlein*, vol. 4, p. 599.

##### 82. *Register May Order.*

The Register has power to make the order, under Section 26 of the Bankrupt Act, requiring the bankrupt or a witness to appear and be examined.

It is not necessary to apply to the court to obtain such order.

On such examination the bankrupt or witness may be examined fully, substantially as under a reference upon a creditor's bill, or in supplementary proceedings under the code.—*In re Pioneer Paper Company*, vol. 7, p. 250.

#### 17. *Wife's Separate Estate.*

##### 83. *Prior to Contracting Debt.*

Where counsel of creditor put questions to bankrupt upon his examination, touching property of his wife, and his own acts in relation thereto, bankrupt objected that the questions related to matters existing and transpiring prior to the time when the creditor's debt was contracted, and declined to answer unless compelled.

*Held*, That the questions were proper, and bankrupt should answer.—*Craig*, vol. 3, p. 100.

##### 84. *Connected with Bankrupt Estates.*

Where a wife of a member of a bankrupt firm loaned the firm, previous to its bankruptcy, moneys arising from the sale of property which had been held in her husband's name, but the proceeds of which were promised to her in consideration of her executing a deed therefor, said moneys not appearing on the firm-books to the credit of the wife, but to credit of her husband as a member of the firm, no separate account appearing in the husband's

separate account-books, except under the head of family expense—and where the husband purchased, as the agent of his wife in her absence from home, real estate, which was conveyed to her in her own name, and which real estate was improved by his wife through her husband, as her agent, and the improvements paid for by firm cheques, as in payment to her of her loans to the firm. This testimony being objected to as immaterial and irrelevant, and given under and subject to such objections, and the question as to what estate said bankrupt's wife had, and had she any estate except the property above referred to, and was she possessed of \$37,000, being also objected to,

*Held*, The questions must be answered.—*Clark, West, Maxwell, and Davis*, vol. 4, p. 237.

## EXECUTION.

See ASSIGNEE,  
JUDGMENT,  
PREFERENCE,  
SALES,  
SHERIFF,  
STAY OF PRO-  
CEEDINGS.

### EXECUTION—

- I. *Arrest*, p. 396.
- II. *Determination of*, p. 396.
- III. *Election*, p. 397.
- IV. *Lien*, p. 397.
- V. *Property Included*, p. 397.
- VI. *Property Subject*, p. 397.
- VII. *Restraining Enforcement*, p. 397.
- VIII. *Validity of*, p. 398.

#### I. *Arrest*.

##### 1. *Alias Execution not a New Arrest*.

The issuing of an *alias* execution is not in law a new arrest during the pendency of the proceedings in bankruptcy, but only a lawful continuation of the old arrest according to the terms and for the purpose for which it was originally made.—*Hazleton*, vol. 2, p. 81.

#### II. *Determination of*.

##### 2. *Expediting Proceedings for Decision as to Lien*.

Where, under an agreement of the ex-

ecution creditor, the property levied on passes into the possession of the assignee in bankruptcy, without prejudice to such prior lien, under the levy, as may be sustainable, the assignee and the Register should, if the execution creditor asks it, expedite the proceedings for such a decision.—*Beck*, vol. 1, p. 588.

##### 3. *No Dispute as to Validity of*.

Where there is no dispute as to the validity of judgments under which executions were issued and levy made, the execution creditors are entitled to satisfaction out of the proceeds of the goods levied on by the sheriff, and afterwards seized by the United States marshal under a warrant in bankruptcy.—*Swope et al. v. Arnold*, vol. 5, p. 148.

##### 4. *Satisfaction by Bankrupt Court out of Proceeds*.

Where an execution creditor has been enjoined from further proceeding in his execution by an injunction issued out of the Circuit Court in aid of the bankruptcy proceedings, he may, if he elect so to do, have his claim of priority of payment out of the funds (proceeds of sales of property upon which his execution is alleged to have been a lien) in the hands of the assignee, determined at a general meeting of creditors under the 27th Section of the Bankrupt Act, subject to exception to the District Court sitting in bankruptcy.—*In re Dunkle & Dreisbach*, vol. 7, p. 72.

##### 5. *Entitled to Summary Hearing when Delayed by Injunction*.

Where an execution creditor, under a levy prior to proceedings in involuntary bankruptcy, has been delayed by an injunction under such proceedings, he is entitled to a summary hearing at any stage after the execution of the assignment.

If the injunction has been issued out of the Circuit Court, under the equitable jurisdiction auxiliary to that of the District Court in bankruptcy, the execution creditor may, at his election, require the assignee, as complainant, to proceed in the Circuit Court in equity, or invoke the summary jurisdiction of the Court of Bankruptcy for a decision of the question of priority.—*Hafer & Brother*, vol. 1, p. 586.

III. *Election.***6. Execution-Creditor Levying not Estopped from Filing Petition.**

The levy by a creditor of an execution on sufficient property to satisfy his debt does not estop him from moving to have his debtor adjudged bankrupt, but the filing of the petition in bankruptcy will be held a waiver of the levy, and an election by the creditor to proceed in the bankrupt court.—*In re Sheehan*, vol. 8, p. 345.

**7. Idem, Alleging the Seizure under the Execution as the Act of Bankruptcy.**

A creditor knowing his debtor to be insolvent may prosecute his debt to judgment, issue execution and levy on the property of his debtor, and afterwards have the debtor adjudicated bankrupt for allowing his property to be taken on the execution.—*Cole v. Hale*, vol. 8, p. 562.

IV. *Lien.***8. In Illinois.**

An execution in the hands of the sheriff being by the laws of the State of Illinois, a lien upon all the personal property of the defendant, within the county, for the space of ninety days, if a petition in bankruptcy is filed during that time, the lien is transferred to the property in the hands of the assignee, and the execution must be paid in full out of the proceeds.

A direction by the execution-creditor to the sheriff "to hold the execution, but not to levy for a few days, or until further orders," does not impair the lien.—*Weeks*, vol. 4, p. 364.

**9. Levied prior to Commencement of Proceedings.**

Where an execution on final judgment has been levied by a sheriff prior to the commencement of proceedings in bankruptcy the possession of the sheriff cannot be disturbed by the assignee. The assignee is only entitled to claim the residue in the hands of the sheriff after satisfying the execution in his hands.—*Marshall v. Knox*, vol. 8, p. 97.

**10. Levy prior to Filing of Petition.**

The right of an execution-creditor or a landlord, upon a warrant of distress, is paramount to that of the assignee in bank-

ruptcy, where the execution or warrant of distress was issued before the commencement of proceedings in bankruptcy.—*Wilson v. Childs*; *Anchertz v. Campbell*; *In re Warner*, vol. 8, p. 527.

V. *Property Included.***11. Bankrupt's Property Includes Money Raised on.**

Where a sheriff, on an execution issued from a State court, collected the amount due on a *fi. fa.*, and was a few days thereafter enjoined from interfering with or disposing of the bankrupt's property,

*Held*, That this injunction was a sufficient answer for the sheriff to make to an order from the plaintiff requiring him to pay over the money.

That bankrupt's property includes money raised on execution by the sale thereof.—*James H. Mills v. Abraham B. Davis*, vol. 10, p. 340.

VI. *Property, Subject.***12. After Filing of Petition, Property not Subject to.**

The property of a bankrupt, after filing his petition, is not liable to be taken on execution, and the court will prevent such interference by injunction.—*In re Wallace*, vol. 2, p. 134.

**13. May Issue against Joint Debtor after Injunction against Bankrupt.**

A joint judgment against the bankrupt and a third party does not in any way affect the right of the plaintiff to proceed against the third party, even though enjoined from enforcing execution against the bankrupt.—*Wm. Penny v. A. H. Taylor*, vol. 10, p. 200.

VII. *Restraining Enforcement.***14. Proceeding under Execution Obtained in State Court.**

In a case of involuntary bankruptcy in which the debtor being insolvent or having insolvency in contemplation, and intending to give a preference or to defeat or delay the operation of the Bankrupt Law, has, within six months before the commencement of the proceedings in bankruptcy, given to a creditor who had reasonable cause to believe that a fraud on this law was intended, or that the debtor was insol-

vent, a warrant of attorney under which judgment had been confessed in a State court, and an execution had been levied upon his stock in trade, which has not yet been sold under it, the present Bankrupt Law gives to the court of the United States for the proper judicial district, jurisdiction to prohibit such creditor, by injunction, from proceeding further under such execution.—*Irving v. Hughes*, vol. 2, p. 61.

#### 15. Bond and Appeal.

Where the court cannot approve the bond in appeal as proper in form, and the delay in filing has been more than ten days, the issuing of execution on the decree will not be stayed.—*Benjamin, Assignee, v. Hart*, vol. 4, p. 408.

#### 16. U. S. Court may Restrain State Sheriff.

The United States District Court sitting in bankruptcy has power to enjoin the sheriff of a State court, or parties litigant therein, from proceeding to sell property levied upon by virtue of a writ of execution issued out of such court upon a judgment obtained therein, before proceedings in bankruptcy were commenced.—*In re Malory*, vol. 6, p. 22.

#### 17. Contempt.

A creditor who had obtained judgment in a State court, and issued execution before his debtor was adjudged bankrupt, was restrained from selling the property, after adjudication, by an injunction of the United States Court sitting in bankruptcy. Notwithstanding this injunction, however, he caused the property to be sold by the sheriff.

*Held*, That an attachment for contempt in violating the injunction would lie.—*R. Atkinson*, vol. 7, p. 143.

### VIII. Validity of.

#### 18. In Hands of Sheriff before Filing of Petition and Levied.

Before a voluntary petition was filed, execution issued on a docketed judgment came into the hands of the sheriff, who had levied on and held personal property of bankrupt under a prior execution.

*Held*, That liens against the real estate, by the New York law, were perfected in both cases within the saving clauses of

Sections 14 and 20 of the Bankrupt Act, and that the sheriff should be allowed to sell the personal property to satisfy the executions, and any deficiency would constitute a lien on the real estate, to be discharged on application to the court.—*In re John P. Smith & James Smith*, vol. 1, p. 599.

#### 19. Creditors Taking out without Reasonable Cause to Believe Debtor Insolvent.

Creditors taking out executions against the property of their judgment debtors, not having reasonable cause to believe them insolvent at the time, obtain a valid lien upon the property thus levied upon as against the assignee in bankruptcy, and when invalid levies are set aside, they come into full operation.—*In re Black & Secor*, vol. 2, p. 171.

#### 20. Idem.

Creditors holding a judgment may order execution to issue, and levy upon and sell the property of their debtor, and the Bankrupt Law will protect them in the advantage thus secured, although they may have had, at the time of ordering the execution, doubts as to the solvency of the debtor.—*In re W. W. Kerr*, vol. 2, p. 388.

#### 21. Idem—But with Reason to Believe Debtor Insolvent.

A creditor who knows that his debtor cannot pay all his debts in the ordinary course of his business, has a reasonable cause to believe his debtor insolvent, and will not be allowed to secure, by confessions of judgment and the levy of executions, any preference over other creditors, and the assignee in bankruptcy may recover the property seized and taken upon executions under such judgments, or the value thereof.—*Wilson, Assignee, Brinkman et al.*, vol. 2, p. 468.

#### 22. Levy must be in Conformity with Laws of the State.

The petition of assignees in bankruptcy to have the levy of an execution on personal property of the bankrupts declared void, will be granted where it appears that such levy is not in conformity with the laws of the State in which the same is made.—*Beers et al., Assignees, v. Placc & Co. et al.*, vol. 4, p. 459.

**23. Sale under a Transfer by Debtor, when.**

Where only one subject of an intended execution can have been in view of the parties to a confessed judgment, a levy made accordingly on that subject, and a sale of it by the sheriff, though constituting in form an involuntary transfer, is indirectly a transfer or disposition of the property by the debtor.

An intended security which would be ineffectual in the form of a mortgage or bill of sale, cannot be rendered effective through the device of a warrant of attorney given by a trader to a creditor, which enables him at pleasure to stop the debtor's business, and prevent other creditors from getting any share of his available assets.—*Hood et al. v. Karper et al.*, vol. 5, p. 358.

**24. Where Business is Stopped by Issue of.**

Where an execution must necessarily stop the debtor's business, the execution-creditor, as a rule, has reason to believe the debtor insolvent, and in general intends what, if not prevented, would be a fraud on the provisions of the bankrupt law.—*Hood et al. v. Karper et al.*, vol. 5, p. 358.

**25. Sale under Passed, no Title, when.**

A sale of the debtor's land by virtue of an execution issued and levied after the filing of the petition in bankruptcy, will not pass the title to the land as against the assignee, although the judgment was entered and the lien created prior to the bankruptcy.—*Davis v. Anderson et al.*, vol. 6, p. 145.

**26. Issued on Fraudulent Judgment.**

An assignee has the right to proceed against a creditor in the Federal court, for the proceeds of a sale on an execution issued out of a State court, where the judgment on which it is founded is alleged to be in fraud of the Bankrupt Act.—*Traders' National Bank of Chicago v. Campbell*, vol. 6, p. 353.

**27. Sale under by Creditor, with Reasonable Cause to Believe his Debtor.**

When an execution-creditor knew that his debtor was unable to pay his debts at

maturity, he was put upon inquiry at once, and must be adjudged chargeable with the knowledge he would have thus obtained, and guilty of receiving a preference with reasonable cause to believe his debtor insolvent. The claim cannot be proved until the creditor has surrendered to the assignee the advantage obtained by his judgment.—*In re Forsyth & Murtha*, vol. 7, p. 174.

**28. Idem.**

An insolvent debtor, within four months before the filing of a petition in bankruptcy, suffered his property to be seized and sold, on execution, by a creditor who had reasonable cause to believe the debtor insolvent at that time.

*Held*, That the assignee in bankruptcy was entitled to a judgment against the creditor for the value of the property seized on the execution.—*Christman v. Haynes*, vol. 8, p. 528.

## EXECUTORS.

See BANKRUPT ACT.

**Executorships to Continue Business are not within the Bankrupt Act.**

A made a codicil to his will nominating C and D his executors for the limited purpose of winding up his business (banking). The business having been continued by them, as such executors, upon their suspension a petition in bankruptcy was filed against them.

*Held*, That this is not one of the class of executorships designed to be administered under the Bankrupt Act.—*Graves et al. v. Winter et al., executors*, vol. 9, p. 357.

## EXEMPTION.

See AMENDMENT,  
ASSIGNEE,  
CONSTITUTIONALITY,  
DEBT,  
HOMESTEAD,  
LIEN,  
MONEY,  
PRACTICE,  
STATE INSOLVENT LAWS.

**EXEMPTION—**

- I. *Amendment*, p. 400.
- II. *Additional Exemptions*, p. 400.
- III. *Application for*, p. 400.
- IV. *Constitution of N. C.*, p. 401.
- V. *Domicile*, p. 401.
- VI. *Exception*, p. 401.
- VII. *Expectant Interest*, p. 401.
- VIII. *Exempt from Execution*, p. 401.
- IX. *Furniture*, p. 401.
- X. *Grantee*, p. 401.
- XI. *Joint Assets*, p. 401.
- XII. *Lien*, p. 402.
- XIII. *Mechanics*, p. 402.
- XIV. *Money*, p. 402.
- XV. *Necessary Articles*, p. 402.
- XVI. *Partnership Assets*, p. 403.
- XVII. *Real Estate*, p. 403.
- XVIII. *Report by Assignee*, p. 403.
- XIX. *State Exemption*, p. 403.
- XX. *Waiver of*, p. 404.
- XXI. *Widow of Bankrupt*, p. 404.

**I. Amendment.****1. Exempts only against Subsequent Judgments.**

The amendment of March 3d, 1873, construed, and held to only allow the exemptions granted by State laws in 1871, as against judgments of State courts when such judgments are rendered after the passage of the amendment of 1873. A construction of the amendment of 1873, as giving the exemption of 1871 against liens of force prior to the adoption of State laws granting the exemptions, held to be contrary to reason and justice, and the fundamental principles of the social compact.—*Dillard*, vol. 9, p. 8.

**2. Idem, Unconstitutional.**

The amendment of 1873 to the Bankrupt Act of 1867, does not provide that the exemption laws, as they exist, shall be operative and have effect under the Bankrupt Law, but that in each State the property specified in such laws, whether actually exempted by virtue thereof, or not, shall be excepted. It, in effect, declares, by its own enactment, without regard to the laws of the State, that there shall be one amount or description of exemption in one State and another in another State, and,

therefore, is unconstitutional and void. It also changes existing rights between debtor and creditor.—*In re Deckert*, vol. 10, p. 1.

**3. Contra.**

The amendment of the Bankrupt Act of March 3, 1873, in respect to exempt property, is constitutional, and the exemptions allowed by that amendment are valid against debts of the bankrupt, without regard to the time when contracted, whether before or after the amendment, and also against liens by judgment or decree of any State court.—*In re Willis A. Jordan*, vol. 10, p. 427.

**II. Additional Exemptions.****4. Under Act Passed Pending Proceedings.**

A bankrupt, whose petition was filed in May, 1871, and had been allotted an exemption in August, 1871, under the provisions of the Bankrupt Act as it then stood, applied, after the amendment of June, 1872, for the additional exemptions allowed by that amendment.

*Held*, That he was entitled thereto. *Held further*, That where the real estate had been sold prior to June, 1872, the bankrupt was entitled to an exemption out of the proceeds of said real estate in the hands of the court, equal to the amount of real estate he would have been entitled to retain had his petition not been filed until after June, 1872.—*In re Vogler*, vol. 8, p. 132.

**III. Application for.****5. Prior to Discharge.**

The application for the exemption allowed by the Bankrupt Act can only be made by bankrupt previous to obtaining his discharge.—*In re Kean & White et al.*, vol. 8, p. 367.

**6. Attempted Fraudulent Disposition of Property does not Bar.**

Although a conveyance from a father to a son be void as to creditors on account of fraud, this fraud does not dispossess the father of a right to have a homestead exempted to his family out of property thus attempted to be placed beyond reach of Bankrupt Court.—*Penny v. Taylor*, vol. 10, p. 200.



IV. *Constitution of North Carolina.*7. **Approval by Congress.**

The approval by Congress of the new Constitution of North Carolina, does not operate as an amendment of the Bankrupt Law with respect to the additional exemptions therein provided for. A bankrupt is not entitled to an exemption of \$1,000 in real estate, \$500 in personal property, under the new Constitution.—*In re McLean*, vol. 2, p. 567.

V. *Domicile.*8. **Exemptions Existing in.**

A bankrupt who files his petition after the passage of act of March 3d, 1873, is entitled to have the assignee set apart to him the exemptions "as existing in the place of his domicile on the 1st day of January, 1871," even though there are judgments before rendered prior to the passage of the State Act giving the increased examination.—*In re Smith*, vol. 8, p. 401.

9. **Secured to Bankrupt.**

It is the duty of the Bankrupt Court to see that the bankrupt's exempt property is secured to him. Property exempt by the laws of the State of the bankrupt's domicile is also exempt by the 14th Section of the present Bankrupt Act.—*In re Stevens*, vol. 5, p. 298.

VI. *Exception.*10. **To Assignee Allowance—Real Estate.**

Where creditors claim that unauthorized exemptions are exempted to be made to the bankrupt by the assignee, they must except, under General Order 19, to his report within the requisite time, as respects household furniture, necessary articles, etc., but as to real estate the attempted exemption is void, no title thereto passes from the assignee, and creditors need not except to the report but only to the account of the assignee, and hold him responsible for any deficiency.—*In re Elizur Gainey*, vol. 2, p. 525.

VII. *Expectant Interest*11. **May be Exempted.**

Under the provision of the 14th Section of the Bankrupt Law of March 2d, 1867, excepting from operations of the act the property of debtors exempted from the levy and sale by the laws of the State, a

vested expectant interest of a bankrupt in a sum of money payable at his own death, or at the death of another person, may, in Pennsylvania, be set apart for the use of the bankrupt; so, however, that its appraised present value, estimated as in case of life insurance, does not exceed \$300, or that the bankrupt does not receive more than \$300, if the value thus estimated exceeds that amount.—*In re Bennett*. *In re Erben*, vol. 2, p. 181.

VIII. *Exempt from Execution.*12. **Deducted from Recovering.**

An assignment by an insolvent of all his property for the benefit of preferred creditors is an act of bankruptcy. Where property of an insolvent was assigned to the creditors with fraudulent preference,

*Held*, In an action brought by the assignee in bankruptcy to recover said property, that the value of property exempt from execution must be deducted, and judgment entered up for the remainder.—*Grow v. Ballard et al.*, vol. 2, p. 194.

IX. *Furniture.*13. **Household and Kitchen may be Set Apart.**

Under Section 14 of the Bankrupt Law, household and kitchen furniture and other articles and necessities to the amount of five hundred dollars may be set apart.—*Feeley*, vol. 3, p. 66.

X. *Grantee.*14. **Of Property Subject to Exemption.**

Where, prior to filing a petition in bankruptcy, the debtor has disposed of a homestead exempted to him under the State laws, and which, if in his possession, would be protected under the act of March 3d, 1873, against liens of prior judgments, he cannot invoke the protection of the Bankrupt Act in favor of his vendee.—*Everett*, vol. 9, p. 90.

XI. *Joint Assets.*15. **For Individual Exemption.**

Joint assets are liable to the provisions of the Bankrupt Act, allowing exceptions. Where there are not sufficient individual assets, assignees cannot refuse to set aside exempt property out of joint property.—*Rupp*, vol. 4, p. 95.

XII. *Lien.***16. Property Subject to, not Set aside.**

A sold B a certain quantity of land, receiving other land in part payment, and taking B's notes for the balance of the purchase money. A died, and his executor sued on the notes and recovered judgment thereon. B was afterwards adjudged a bankrupt. A's executor in proving the debt, asserted the vendor's lien; subsequently thereto the assignee exempted two hundred and ninety acres of the land in question, under the 14th Section of the Bankruptcy Act.

*Held*, That the vendor's equitable lien should be upheld by a court of bankruptcy, and that the assignee erred in setting any of this property apart as exempt.—*In re Perdue*, vol. 2, p. 183.

**17. Idem.**

The bankrupt is not entitled to the exemption of a homestead out of land mortgaged by him at the time of its purchase, to secure the payment of the purchase money, until the said mortgage is satisfied.

The costs and expenses of the bankruptcy proceedings are entitled to priority of payment out of the funds in court, derived from the sales of the property.—*Whitehead*, vol. 2, p. 599.

XIII. *Mechanics.***18. Merchant not Allowed.**

A merchant doing business and residing in Kansas is not entitled to the special exemption allowed mechanics, miners, or other persons for the purpose of carrying on their trade or business. Such exemption, made by an assignee in bankruptcy, will be disallowed.—*In re Schwartz*, vol. 4, p. 588.

XIV. *Money.***19. May Set apart as Necessaries.**

The assignee in bankruptcy may designate a sum of money as necessaries under Section 14 of the Statute.—*Re Ira Hay et al.*, vol. 7, p. 344.

**20. Contra, unless Proceeds of Exempted Property.**

Money cannot be set apart to the bankrupt as part of his exempt property, unless such money is the proceeds of specific

things which could and ought to be set apart under the head of "other articles and necessities of the bankrupt."—*In re Welch*, vol. 5, p. 348.

**21. Nor in lieu of.**

An assignee has no right, where bankrupt's property has been seized and sold under execution and distress for rent to allow money, the proceeds of debts due to the bankrupt, for the purpose of making good the property that would have been exempted had it not been sold.—*In re Lawson*, vol. 2, p. 54.

XV. *Necessary Articles.***22. Additional to State Exemption.**

Under the present Bankrupt Law of the United States, and the State Exemption laws incorporated with its provisions, the exemption of such property, real or personal, of the appraised value of \$300, as a bankrupt in Pennsylvania may elect to retain as exempt under the laws of the State, is not included in, but is additional to, the exemption from the operation of the Bankrupt Law of such necessary and suitable articles, not exceeding in value \$500, as with due reference, in their amount, to the bankrupt's family, condition, and circumstances, may be designated and set apart by the assignee, subject to the court's revision. But this exception, to the full value of \$500, ought not to be allowed in all cases, without discrimination, or measure.—*In re David Ruth*, vol. 1, p. 154.

**23. Discretion of Assignee.**

The discretion of the assignee limited to the "other articles and necessities." Rule for exercising such discretion laid down.—*Feeley*, vol. 3, p. 66.

**24. Idem.**

The assignee must select the property to be exempt under the Bankrupt Law, and should refuse to set apart mere articles of luxury, as gold watches or pianos, etc.

The bankrupt may select the property exempt under the State law, and it is for him to choose or reject articles of mere luxury.—*Van Buren Cobb*, vol. 1, p. 414.

**25. Idem.**

Section 14 of the Bankrupt Act must be so construed that over and above the necessary household and kitchen furniture,

the assignee may, in his discretion, exempt in favor of the bankrupt "such other articles and necessities as he may think right," so that such exemption, together with the household and kitchen furniture allowed to be retained by him, shall not exceed \$500.—*In re Van Buren Cobb*, vol. 1, p. 414.

#### XVI. Partnership Assets.

##### 26. Not Allowed to Individual Member.

The individual members of a bankrupt firm, in Pennsylvania, have no right to any of the partnership assets as exempt property; either under the United States Bankrupt Law of 1867, or the law of that State.—*In re James H. Hafer & Brother*, vol. 1, p. 547.

##### 27. Idem.

An exemption, in accordance with the provisions of the 14th Section of the present Bankrupt Act, cannot be allowed to an individual partner out of the partnership estate, as such exemption can only be allowed in case there is a surplus after paying the partnership creditors.—*In re J. S. & J. Price*, vol. 6, p. 400.

##### 28. Idem.

A partnership is not entitled to the exemption allowed by the Bankrupt Law, nor can the individual members of the firm receive a separate exemption from the undivided partnership property.—*Blodgett & Sanford*, vol. 10, p. 145.

##### 29. Contra.

Where assignee had allowed the two members of a bankrupt firm an exemption, under the laws of Missouri, of one hundred and fifty dollars each, out of partnership assets, there being no individual assets, Register disallowed the same, and on application of bankrupt's attorney, certified facts for opinion of the court.

*Held*, The bankrupts were entitled to the exemption out of partnership assets. *Young & Young*, vol. 3, p. 440.

##### 30. Idem.

The individual members of a commercial firm are entitled to have the exemptions allowed them by the Bankrupt Act set apart to them out of the firm assets where the individual assets of each co-partner is not sufficient.—*In re McKircher & Pettigrew*, vol. 8, p. 409.

##### 31. Idem. On Property Set apart to Individual Members prior to Bankruptcy.

A member of a bankrupt firm filed a petition to have a dwelling house and lot, occupied by himself and family, set apart by the assignee as exempt property under the Bankrupt Act and the laws of Michigan. The lot was the sole property of the petitioner, the house was built of lumber and other materials belonging to the bankrupt firm, and with funds of the said firm, which were charged on the books to the house, and not specifically to the petitioner. At this time the firm was indebted to the petitioner to an amount exceeding the cost of the house, and was considered solvent.

*Held*, That the firm had no interest or ownership in the house, and, as it was indebted to the petitioner, no claim for reimbursement.—*Parks*, vol. 9, p. 270.

#### XVII. Real Estate.

##### 32. May be Set apart.

Real estate may be set apart as a portion of the bankrupt's exemption where it will not injure the sale of other real estate, or work adversely to the interest of the creditors.—*In re Leroy T. Edwards*, vol. 2, p. 349.

##### 33. Contra.

Real estate cannot be set apart to a bankrupt as exempt property under the head of "articles or necessities."—*In re Thornton*, vol. 2, p. 189.

#### XVIII. Report by Assignee.

##### 34. Extension of Time.

The rule requiring the assignee to make a report of exempted property within twenty days, is to receive such a construction as to prevent injustice to the bankrupt, and it may be extended by the court and leave granted to the assignee to make a further report.—*In re David Shields*, vol. 1, p. 603.

#### XIX. State Exemption.

##### 35. Is Additional to Allowance by Bankrupt Act.

The exemption of such property, real or personal, of the appraised value of \$300, as a bankrupt in Pennsylvania may elect

to retain as exempt under the laws of the State, is not included in, but is additional to, the exemption from the operation of the Bankrupt Law of such necessary and suitable articles, not exceeding in value \$500, as with due reference, in their amount, to the bankrupt's family condition and circumstances, may be designated and set apart by the assignee, subject to the court's revision.—*In re David Ruth*, vol. 1, p. 154.

### 36. Must Comply with Provisions of State Law.

Where by the State law real property of a certain amount is exempted from levy and sale, provided the bankrupt complies with the requirements of the said law, and he fails so to comply, such property is not exempt from the operation of the Bankrupt Act, and the assignee must sell the same for the benefit of creditors.—*In re Farish*, vol. 2, p. 168.

### 37. Idem.

The State exemption must be ascertained by the mode designated by the State Law.—*Feely*, vol. 3, p. 66.

### 38. Under both State and Bankrupt Law Cannot be Sold.

Property of the bankrupt, exempt, both by State and Bankrupt Law from levy and sale, cannot be sold until after he has filed his petition in bankruptcy, although then levied on by a United States marshal.—*In re Griffin*, vol. 2, p. 254.

### 39. Extends to all Property Exempted from Forced Sale.

All property exempt from forced sale under the laws of the different States, is saved to the bankrupt by the provisions of Section 14 of the Bankrupt Act of 1867.—*T. Maxwell v. W. C. McCune et al.*, vol. 10, p. 307.

## XX. Waiver of.

### 40. Bankrupt Estops Vendee.

If a bankrupt does not choose to assert any claim to property that is exempted from execution under the law of the State where he resides, a mortgagee of that property cannot claim it as against the assignee in bankruptcy.—*Edmonson v. Hyde*, vol. 7, p. 1.

### 41. In Virginia by Contract.

In Virginia a debtor may bind himself by

contract to waive the homestead exemption allowed him by the laws of that State in favor of a particular debt, and the courts will enforce and give effect to such waiver.—*Solomon*, vol. 10, p. 9.

## XXI. Widow of Bankrupt.

### 42. Not Entitled to Exempt Property.

The widow of a bankrupt is not entitled to the personal property exempted by the provisions of the 14th Section of the Act of 1867, nor is the assignee in bankruptcy. No title to exempt property passes to the assignee by the assignment; it remains in the bankrupt; at his death it passes to his legal representatives.—*In re John H. Hester*, vol. 5, p. 285.

## EXPECTANT INTERESTS.

See ASSETS.

## EXPENSES.

See COST AND FEES.

## EXPUNGING PROOF.

See PROOF OF DEBT.

### 1. Pendency of Proceeding for, Does not Affect Status of Creditor.

Where creditors' claims have been protested against, if duly proved, the creditors representing those claims will be entitled to an order according to Form No. 45, under Section 26, to examine the bankrupt.—*In re Belden & Hooker*, vol. 4, p. 194.

### 2. Assignee should Apply for, when not Satisfied.

Where an assignee in bankruptcy is not satisfied with the legality or correctness of any claim filed with him, the proper practice is for him to move to have it expunged under the 34th rule of the General Orders in bankruptcy, and proceed as in that rule directed.—*Firemen's Insurance Company*, vol. 8, p. 123.

### 3. May Apply for, on the Ground of Usury.

An assignee may object to proof of claim for usury, or any other cause that the bankrupt might have plead to an action at law.—*Prescott*, vol. 9, p. 385.

## FALSE REPRESENTATIONS.

See REPRESENTATIONS.

## FALSE SWEARING.

See CRIMINAL PROCEEDINGS,  
MISDEMEANORS,  
PENALTIES.

## 1. Sufficiency of Specification.

A specification in opposition to a bankrupt's discharge is specific enough to be triable which avers willful false swearing to his schedules on the part of the bankrupt.—*In re Robert C. Rathbone*, vol. 1, p. 824.

## 2. Omitting from Schedule Property Fraudulently Transferred.

A bankrupt must be held to have willfully sworn falsely in the affidavit annexed to his inventory, where he states therein that he has no assets, when he has concealed his property, derived from profits in the firm of which he is really a partner, by covering them (the profits) up in the hands of his wife.—*Rathbone*, vol. 1, p. 536.

## 3. Equitable Interest Sold under Execution.

Where the husband's equitable interest in the estate or property of the wife has been levied upon and sold under execution, the husband has no longer any interest or estate to be returned in his schedules; and he cannot be charged with swearing falsely in stating that he has no interest or estate in such property.—*In re Hummitsh*, vol. 2, p. 12.

## 4. Bankrupt's Property Purchased by Wife.

Where all of a bankrupt's right and title to property has been sold by creditors under judgment and execution, and purchased by his wife with her own separate funds, he has no title of estate in such property which he could be required to report in his schedules, and hence its omission cannot subject him to the penalties for false swearing.—*In re Pomeroy*, vol. 2, p. 14.

## 5. Bankrupt ostensibly as Clerk, but really as Partner.

Where the wife of a bankrupt had with her own money bought out the interest of a retiring member of an insurance broker's firm, which employed the bankrupt ostensibly

as clerk, at a percentage of profits in lieu of a salary, and the shares of the wife and the bankrupt did not exceed the fair remuneration of the bankrupt for his services to the firm, which he was mainly instrumental in building up and conducting, the annual profits whereof were thirty-five thousand dollars,

*Held*, That the bankrupt was virtually a partner, and swore falsely when he stated in his schedules that he had no assets. Fraud is scarcely ever made out by direct evidence, hence the proof must be generally arrived at by the interweaving of circumstances. Discharge refused.—*In re Rathbone*, vol. 2, p. 260.

## 6. Discharge Annulled if Names of Creditors willfully Omitted.

When a certificate of discharge was duly granted to a bankrupt, and within the limited term of two years, two creditors whose debt was provable against the said bankrupt's estate, applied to have his discharge annulled and set aside on the ground that he had willfully sworn falsely in his affidavit annexed to his schedules of creditors and liabilities in that, having knowledge of the residence of said creditors and his liability to them, he did not include in his schedules the names of said creditors or their claim.

*Held*, That the court finding the act as charged proven, and that the same was a particular fact concerning the debts, and that the creditors had no knowledge concerning the commission of said act until after the granting of the discharge, judgment must be given in favor of the creditors, and the discharge is therefore set aside and annulled.—*In re Herrick*, vol. 7, p. 341.

## FAMILY EXPENSES.

## Expenditures for, while Insolvent.

Expenditures incurred by bankrupt while insolvent, in support of family, and the evidence is silent as to their character, the court cannot admit such expenditures as a ground for refusal of discharge.—*Rosenfield, Jr.*, vol. 2, p. 117.

## FEES.

See COST AND FEES.



## FEME COVERT.

See ACT OF BANKRUPT-  
CY,  
MARRIED WOMAN.

## FEME SOLE.

See ACT OF BANKRUPT-  
CY,  
ADJUDICATION.

**Effect of Marriage and Bankruptcy of  
Husband on Title.**

In May, 1863, a *feme sole*, being owner in her own right, of a chose in action, marries, and a suit is instituted shortly thereafter to recover from the debtor in the name of the husband and wife. This suit continues pending until 1868, when the husband, upon his own petition, was declared a bankrupt, and an assignee was appointed, and an assignment executed in the usual form. Thereafter the assignee was, upon his own motion, by order of the court, made a party plaintiff with the wife, and a judgment was recovered in favor of the plaintiffs.

*Held*, That the assignee may proceed to enforce the payment of such judgment by execution, and receive the money when collected—if this be done in the lifetime of the husband and wife—and if collected by him must distribute the same to creditors as the law directs. The assignee is deprived of no right because the bankrupt has failed to schedule such chose in action, nor by the provisions of the constitution of North Carolina, adopted in 1868.—*In re Boyd*, vol. 5, p. 199.

## FIDUCIARY DEBT.

See AGENT,  
COMMISSION MER-  
CHANT,  
DEBT,  
DISCHARGE,  
GUARDIAN,  
TRUSTEE.

## FIDUCIARY DEBT—

- I. *Arrest*, p. 406.
- II. *Bankrupts*, p. 406.
- III. *Commission*, p. 406.
- IV. *Guardian*, p. 407.
- V. *Payment*, p. 407.
- VI. *Specification*, p. 407.

I. *Arrest.*1. **Not Discharged From.**

Where the bankrupt had flour consigned to him on commission, to sell and remit the proceeds, less the commission, and he converted the proceeds to his own use,

*Held*, On a motion to discharge him from arrest upon the debt, that the same was incurred while the bankrupt acted in a fiduciary capacity, and discharge refused.—*Kimball*, vol. 2, p. 354.

II. *Bankrupts.*2. **Prior to Appointment of Assignee.**

Bankrupts, before the appointment of the assignee, stand in a fiduciary relation to the estate, and cannot be purchasers.—*March v. Heaton & Hubbard*, vol. 2, p. 180.

III. *Commission.*3. **Goods Sold on Commission by Bankrupt.**

Where goods were sent to bankrupt to be sold on commission, and bankrupt after selling refused to account,

*Held*, That the debt, being created by defalcation of bankrupt while acting in a fiduciary relation, was unaffected by discharge.—*In re Kimball*, vol. 2, p. 354.

4. **Commission Merchant.**

I. was indebted to R. for goods deposited with S. in New Orleans in 1860, for sale on commission. R. obtained judgment, and in September, 1867, while S. was in New York City, caused his arrest. S. sued out a writ of *habeas corpus*, to be discharged by the Bankruptcy Court, on the ground that the debt was provable and dischargeable in bankruptcy.

*Held*, That the debt was created while S. acted in a fiduciary character, and was not dischargeable in bankruptcy.—*Seymour*, vol. 1, p. 29.

5. **Idem.**

A commission merchant acts in a fiduciary character, and the trust attaches to the goods consigned to him for sale on commission within the meaning of Section 33 of the United States Bankrupt Act of 1867.—*Lenks v. Booth*, vol. 5, p. 351.

6. **Contra.**

Money collected by an agent under an agreement to account and pay over the pro-



ceeds monthly to his principal, is not a debt created in a "fiduciary character" within the meaning of the Bankrupt Act.

A bankrupt is not liable to arrest on such a debt, and it is discharged in bankruptcy.

The words "fiduciary character," in the Act of 1867, are essentially the same as "any other fiduciary character," in the Act of 1841.

Decisions under the Bankrupt Act of 1841, considered and approved. *In re Kimball*, disapproved.—*Grover & Baker v. Clinton*, vol. 8, p. 312.

#### 7. *Idem*, when Directed to Apply a Part and Remit Balance.

In the provision of the Bankrupt Act of 1867, Chapter 176, Section 83, excepting from the effect of a bankrupt's discharge, debts created by him while acting in any "fiduciary character," does not include the obligation of a creditor to whom the debtor delivered property with directions to sell it, and apply in satisfaction of the debts so much of the proceeds as might be necessary for the purpose, to pay over to the debtor a balance of the proceeds of the sale remaining after such satisfaction; but, it seems, implies a fiduciary relation existing previously to or independently of the particular transaction from which the excepted debt arises.—*Cronan v. Cotting*, vol. 4, p. 667.

#### 8. To Account at Stated Intervals.

When an agent is to account monthly with his principal, a court might infer that the agent was allowed to mingle the money collected with his own funds, and to consider himself an absolute debtor for that amount, and if authority so to do may be implied from the course of dealing, the agent would be exempted from liability for a conversion of money.—*Grover & Baker v. Clinton*, vol. 8, p. 312.

#### IV. Guardian.

#### 9. Surety's Rights against one Discharged.

C. was duly appointed guardian of M., a minor, upon giving the usual bond. Some time thereafter C. became a non-resident, and was removed from the guardianship.

He was shown to have had a considerable amount of money in his hands belonging to his ward, for which he never accounted.

Judgment was recovered against one of the bondsmen June 15th, 1869, which was fully satisfied December 20th, 1870.

C. was adjudged a bankrupt and obtained his discharge December 8th, 1868.

The surety brought an action against C. to recover the money paid by him on account of C.'s defalcation, and as a defense C. interposed his discharge in bankruptcy.

*Held*, That the defalcation of the defendant C., on his bond as guardian, constituted beyond all controversy a debt which was created while he was acting in a fiduciary capacity, and was therefore excepted from the operation of his discharge in bankruptcy; hence, there is no reason why the surety for the same debt should not retain all his rights against the principal.

Judgment reversed and the cause remanded.—*Wesley Halliburton, Appellant, Calvin T. Carter, Respondent*, vol. 10, p. 359.

#### V. Payment.

#### 10. Act of Bankruptcy.

There is no distinction between a fiduciary debt and an ordinary debt, as respects a payment thereof with intent to give a preference, so as to constitute an act of bankruptcy.—*Dibbles et al.*, vol. 2, p. 617.

#### VI. Specification.

#### 11. Not Good in Opposition to Discharge.

Objection to discharge, based upon the fact that the debt was a fiduciary one, is not good, for such debts are unaffected by the discharge.—*In re Elliott*, vol. 2, p. 110.

#### 12. *Idem*.

On a specification in opposition to a discharge, setting forth that a debt due by bankrupts was created while they were acting in a fiduciary character,

*Held*, That the fact was no ground for withholding discharge.—*Tracy, Willson Strong & Orvis*, vol. 2, p. 298.

#### FIFTY PER CENT.

See AMENDMENT,  
ASSETS,  
DEBT,  
DISCHARGE.

#### 1. Amendment July 27th, 1868, Retroactive to what Cases.

A bankrupt having filed his petition on June 8, 1868, applied for a discharge, not-

withstanding his assets will not pay fifty per centum of claims against his estate, and no written assent of a majority of creditors of proved claims is presented.—*In re W. Billing*, vol. 2, p. 512.

## 2. Appraisement of Property before First Meeting of Creditors.

Where a voluntary bankrupt, after January 1, 1869, applied to the court upon his petition and schedule, before the day of first meeting of creditors, to have his assets appraised and determined as being in excess of fifty per cent. of provable claims, etc.,

*Held*, The application must be denied, no debts appearing to have been proved, and no present action of the kind asked could affect the question of the bankrupt's discharge.—*Frederick*, vol. 3, p. 465.

## 3. Though Assets not Equal may have a Partial Discharge.

Where a bankrupt applies for his discharge, his assets not being equal to fifty per cent. of the claims proved against his estate, which were contracted since January 1, 1869,

*Held*, That the bankrupt shall be discharged from all debts provable against his estate which were contracted prior to January 1, 1869.

Discharge does not bar debts contracted since January 1, 1869, which have not been proved.—*In re Seay*, vol. 4, p. 271.

## 4. Of Debts Contracted since January 1st, 1869.

Upon the report of the Register to the effect that he had examined the several papers before him (including a consent to the bankrupt's discharge), that the proofs appeared satisfactory; and *there being no opposing interest*, that the assets of the bankrupt were equal to fifty per cent. of claims proved on account of debts and liabilities contracted subsequent to January 1st, 1869, upon which he was liable as principal debtor, that the assent in number and value of creditors who had proved their claims on debts contracted subsequent to January 1st, 1869, had not been filed, and that under the amendments to the Bankrupt Act, approved July 27th, 1868, and July 14th, 1870, the bankrupt was entitled to his discharge—a discharge

was granted.—*Rockwell & Woodruff*, vol. 4, p. 243.

## 5. Assets not Equaling not Entitled to Certificate of Conformity.

An insolvent, although having assets, and those assets having been duly surrendered to the assignee, but not amounting to the required fifty per cent. of the claims proven against his estate is not entitled to a certificate of conformity, unless the bankrupt before, on, or at the time of hearing of the application for discharge, tender or file the assent in writing of a majority in number and value of his creditors to whom he shall have become liable as principal debtor, and who shall have proved their claims as required by Section 83 of the Bankrupt Act as amended.—*In re Bunster*, vol. 5, p. 82.

## 6. Assets Means Money Received by the Assignee.

Bankrupts made application for their discharge and took the testimony of the assignee, who swore that at the time he took possession of the estate it was worth \$14,000, which was more than fifty per cent. of the debts of said bankrupts, as set forth in their schedule. But the assignee had been unable to collect an amount equal to fifty per cent. of their debts.

*Held*, That the word assets must be construed to mean money received by the assignee, and that bankrupts are only entitled to receive a discharge from their debts contracted prior to January 1st, 1869.—*Van Riper & Van Riper*, vol. 6, p. 573.

## 7. Must Include Costs and Expenses.

Where the proceeds of a bankrupt's assets exceeded the amount of the claims proved against his estate, but after the payment therefrom of costs and expenses, the amount remaining may not equal fifty per centum of said claims,

*Held*, That the bankrupt was not entitled to a discharge under the amendatory act of July 27th, 1869, unless the assent of a majority of his creditors, in number and in value, were shown.—*Vinton*, vol. 7, p. 138.

## 8. Contra, Refers to Amount of Assets at time of Filing Petition.

A bankrupt, who has otherwise conformed to the requirements of the Bank-

rupt Law, is entitled to his discharge if, at the time he filed his petition in bankruptcy, he was possessed of property fairly worth fifty per cent. of the debts proved against his estate, upon which he was liable as principal debtor.—*Lincoln & Cherry*, vol. 7, p. 334.

#### 9. *Idem*.

Where the estate was originally sufficient to pay fifty per cent. of the debts proved, but a large part has been wasted by litigation, the bankrupt is entitled to his discharge without the assent of his creditors.—*Kahley et al.*, vol. 6, p. 189.

#### 10. After Payment of Lien.

When the assets, after the payment of valid liens, do not equal fifty per cent. of the claims proved against him contracted subsequently to January 1st, 1869, on which he was liable as principal debtor, and he fails or neglects to file the consent of a majority in number and amount of those creditors, he can only be discharged from debts contracted prior to January 1st, 1869.—*Graham*, vol. 5, p. 155.

#### 11. Appraisement Exaggerated.

Where an appraisement is exaggerated, although there is no evidence of any depreciation, the proceedings having been commenced after January 1st, 1869, and the debtors not having shown that their assets are or have been at any time since they filed their petition, equal to fifty per cent. of the claims proved against their estate, upon which they are or were liable as principal debtors, and not having filed the assent in writing of a majority in number and value of their creditors, to whom they are or have become liable as principal debtors, and who have proved their claims, discharges are refused.—*Borden & Geary*, vol. 5, p. 128.

#### 12. Proceeds Divisible among Creditors.

To entitle a bankrupt to discharge, the proceeds of his property to be divided among his creditors must be equal to fifty per cent. at the time of the hearing of the application for the discharge before the Register.—*Webb*, vol. 3, p. 720.

#### 13. Application of Amendment of 1874.

A debtor who was adjudged a bankrupt,

in involuntary proceedings on the 28th of June, 1872, but did not petition for his discharge until July 23, 1874, after the passage of the Amendment of June 22, 1874, is not entitled thereto, unless he complies with the *fifty per centum* clause of the Act of 1868.

One adjudged a bankrupt after June 22, 1874, on a petition filed since December 1, 1873, in involuntary proceedings, will not be entitled to a discharge except by compliance with the *fifty per centum* clause of the Act of 1868.—*Francke & Francke*, vol. 10, p. 488.

#### 14. Contra.

The 9th Section, approved June 22, 1874, which relates to the discharge of bankrupts, applies to cases which commenced before the act took effect, and not then concluded, as well as to cases commenced after its passage.—*King*, vol. 10, p. 566.

#### 15. Note Given in 1870, for Old Note Given in 1863.

For a debt contracted in 1863, a note was given at twelve months, and each year thereafter until 1870—the old note was taken up and a new note given, the last note given in 1870.

*Held*, This was not a debt contracted prior to January 1st, 1869, but comes under the *fifty per cent.* clause.—*In re Schumpert*, vol. 8, p. 415.

#### 16. Creditors of a Certain Class Must Assent.

When the estate of a bankrupt does not produce fifty per cent. of the claims proved, it is necessary that creditors of a certain class who have proven their claims should file their assent in writing within a limited time before the hearing of the specifications filed against the bankrupt's discharge, in order that he may be discharged from debts contracted since January 1st, 1869.

The only class of creditors who can oppose the bankrupt's discharge, or withhold their assent on the ground that *fifty per centum* has not been realized, are those whose debts were contracted since January 1st, 1869.—*In re William H. Pierson*, vol. 10, p. 193.

## FILING PROOF OF DEBT.

See PROOF OF DEBT.

**With Assignee, before Admitted as Creditor.**

A creditor who, after making his deposition to prove his debt, retains possession of the deposition, and does not allow it to pass into the hands of the assignee in bankruptcy, is not a creditor who has proven his debt.—*Sheppard*, vol. 1, p. 439.

## FINAL JUDGMENT.

See COURTS,  
JUDGMENT.**In Contemplation of Section 21.**

A judgment of the court below, from which an appeal is pending, is a final judgment, in contemplation of Section 21 of the United States Bankrupt Act.—*Merritt v. Glidden et al.*, vol. 5, p. 157.

## FINISHING CHATTELS.

See ASSETS,  
ASSIGNEE.**Assignee May be Authorized to.**

The District Court in bankruptcy has power to authorize the assignee to expend money in finishing chattels which he finds in an incomplete state and unsalable, when it is made to appear that this can be done within a reasonable time and at a reasonable expense, and that thus they will further procure a large receipt to the creditors.—*Foster et al. v. Ames et al.*, vol. 2, p. 455.

## FIRST MEETING.

See MEETING OF CREDITORS.

## FIXTURES.

See ASSETS,  
LEASE,  
LIEN.**1. Does not Include Furniture.**

A stipulation in a lease that the premises should be occupied as a boot and shoe shop,

and that all fixtures of every description should be put in by the lessee, and might be removed by him at the end of the term, provided he should have kept all his covenants, and not otherwise, and should not be removed during the term without the consent of the lessor, does not purport to give the lessor a lien on the mere furniture, though it should be fitted to the shop, if not annexed to the freehold.

*It seems*, That if such a stipulation did include furniture, it would not be valid against an assignee in bankruptcy, before entry and possession taken by the lessor.

Such a stipulation creates a valid lien on trade fixtures annexed to the freehold, and the assignee can take them only on payment of the arrears of rent.—*Morrow v. Young*, vol. 2, p. 665.

**2. Idem, only What is Annexed to the Freehold.**

In a sale made of the lease, good-will, and fixtures of a grocery store, only such things (or their accessories) as are actually or constructively fastened to the freehold, will pass to the purchaser of fixtures.

A purchaser of the fixtures at such a sale may make claim upon the funds in the hands of the assignee for the sale, by the messenger, of such articles as were properly included under the sale of the fixtures.—*In re Hitchings*, vol. 4, p. 384.

**3. Not Included under Description of "Goods."**

A chattel mortgage "of all the goods and merchandise" in a store

*Held*, Not to include fixtures.—*In re Eldridge*, vol. 4, p. 498.

**4. "Machinery and other Things."**

A chattel mortgage of machinery and other things, which would be trade fixtures as between landlord and tenant, will give the mortgagee a valid lien as against the assignee in bankruptcy, although as against a prior mortgagee of the realty the fixtures would be real estate if it appears that such prior mortgagee makes no claim to the fixtures.—*Ex parte Ames, In re McKay v. Aldus*, vol. 7, p. 230.

## FORECLOSURE.

See ASSIGNEE,  
 CHATTEL MORTGAGE,  
 • CONTEMPT,  
 COURTS,  
 EQUITY,  
 INJUNCTION,  
 MORTGAGE,  
 RESTRAIN, SUIT,  
 SHERIFF.

### 1. Will not be Restrained—Debt Unimpeached.

An unimpeached creditor's lien having, before the commencement of voluntary proceedings in bankruptcy, attached upon part of bankrupt's estate, no consideration of probable sacrifice of the subject of the lien under judicial proceedings for its enforcement in a State court, will induce a court of the United States to restrain, delay, or hinder the creditor from prosecuting them.—*Donaldson*, vol. 1, p. 181.

### 2. After Commencement of Proceedings.

A creditor of a bankrupt holding security by mortgage or deed of trust cannot enforce his security after the commencement of proceedings in bankruptcy until he first prove his debt and receive permission of the court. If he proceed without authority of court the sale will be invalid, and will be set aside, or upon application for good cause the court may confirm the sale upon terms after the debt is properly proved.—*John R. Lee, Assignee, v. Germ. Savings Institution*, vol. 3, p. 218.

### 3. District Court may Restrain—Deprives Creditor of Right to Prove Debt.

The District Court in bankruptcy has power to take the administration of the entire estate and ascertain and liquidate liens thereon, and to restrain the holder of a mortgage or other lien, from proceeding in any suit to enforce such lien.

But when no advantage can result to the estate of the bankrupt, and it appears, without contradiction, that the equity of redemption of a mortgage is of no value, there is no reason why the court should interfere.

By electing to pursue the mortgage premises, the mortgagees deprived themselves of any right to prove their debt in bankruptcy for the deficiency.—*In re Iron*

*Mountain Company of Lake Champlain*, vol. 4, p. 646.

### 4. Notice to Assignee of Application Necessary.

A petition by a secured creditor for leave to foreclose his mortgage, will be dismissed where no notice is shown to the court to have been given to the assignee of such application, and no proof made of the existence of the debt nor the amount.—*F. Frizelle*, vol. 5, p. 122.

### 5. Sheriff's Levy before Adjudication.

A sheriff who levies upon property by virtue of an order to sell under a mortgage foreclosure suit, before the debtor is adjudicated a bankrupt, has a valid lien and may sell the property after the adjudication.—*Goddard, Assignee, v. Weaver*, vol. 6, p. 440.

### 6. When Mortgage may be Foreclosed in State Court.

In certain cases mortgages upon the real estate of the bankrupt may be foreclosed in a State court, providing no objection is made, and where the assignee is satisfied that the mortgaged premises is of less value than the mortgage debt. Where a foreclosure is pending at the time of proceedings in bankruptcy being commenced, the validity of the mortgage, and the amount due thereon may sometimes be settled in the State court, and then it is discretionary with the court in bankruptcy to permit a sale by decree of the State court or not.—*In re Brinkman*, vol. 7, p. 421.

### 7. Plenary Suit.

Jurisdiction to foreclose mortgages upon the estate of a bankrupt is not included in the powers to be exercised summarily under the 1st Section of the Bankrupt Act, and more especially when the alleged mortgagee claims adversely to the assignee and to other mortgagees, and where the title of the applicant is denied, the amount claimed disputed, and it is insisted that if any lien ever existed it was released.

Such controversies must be conducted by a suit to which all persons claiming adversely to the claimants are made parties, and where each will have the right of appeal, given by the law (where the amount is sufficient), to the Supreme Court of the United States.—*Casey*, vol. 8, p. 71.



**8. Contempt.**

Where a mortgagee proceeded in a State court, after petition in bankruptcy was filed by the mortgagor, with knowledge thereof, to foreclose his mortgage, without first obtaining permission of the Bankrupt Court,

*Held*, He was in contempt, and the sale a nullity.—*Phelps v. Sellick*, vol. 8, p. 390.

**9. Cloud on Title.—Injunction.**

An injunction to restrain a mortgagee from making a sale of real estate belonging to a bankrupt will be granted when it appears that the mortgagee made a sale of the property before the adjudication of bankruptcy, but the purchaser, under advice of counsel, declined to make payment and receive deeds therefor, and the sale sought to be enjoined is made under the same terms as before with the appendix, "the property will be sold for account of whom it may concern."—*Whitman, Assignee, v. Butler*, vol. 8, p. 487.

**10. After Bankrupt's Discharge.**

A creditor may proceed *in rem* to foreclose a valid lien, notwithstanding the discharge of the debtor as a bankrupt.—*Stoddard v. Locke et al.*, vol. 9, p. 71.

**11. Prior Incumbrancers Necessary Parties.**

Prior incumbrancers are necessary parties to a bill by a junior mortgagee or his assignee in bankruptcy, where there is substantial doubt as to the amounts due or the property covered by their liens. A court of equity will not expose for sale an interest capable of being reduced to a certain sum, where any doubt exists as to its character and extent. Where a subsequent incumbrancer is already impleaded by a prior one, a subsequent original bill on his part will not be sustained to foreclose a mortgage. When property is in the hands of a receiver, no party having interest therein will be permitted, without leave of court, to seek an enforcement of their rights by an original bill.—*Sutherland et al. v. Lake Superior Ship Canal, Railroad Iron Co.*, vol. 9, p. 299.

## FOREIGN CREDITORS.

**1. Notice.**

The Register fixed the day for the first meeting of creditors at sixty days after

the date of the warrant, and directed notices to be mailed postage paid, to the creditors, all of whom resided without the United States. The bankrupt objected that such creditors were to be notified constructively, and not by mail or personally, under Section 11.

*Held*, That the action of the Register was correct.—*Heys*, vol. 1, p. 21.

**2. Deposition of.**

The deposition of a creditor residing in a foreign state must be taken before a minister, consul, or vice-consul of the United States.—*Strauss*, vol. 2, p. 48.

**3. Cannot Obtain under a Judgment Preference over Resident Creditor.**

A bank in Canada filed with the assignee in bankruptcy proof of an alleged debt to the amount of some fifteen thousand dollars.

Part of this amount was in judgment upon which execution had been issued, and the sum of two thousand dollars was collected over and above the costs and expenses of such sale; the residue of the debt proved was claimed as due upon drafts drawn upon and accepted by the bankrupt, payable in the city of Buffalo, and also included interest at the rate of four per cent., and damages for the non-payment of such acceptances, such damages amounting to nearly five hundred dollars.

*Held*, That, under the circumstances, the bank, if it had had its corporate existence in the United States, could not have obtained, by a suit at law and judgment therein, in the courts of this country, any right to property sold under such judgment, and all such proceedings would have been stayed, on application, by order of the Bankrupt Court; and a foreign creditor cannot claim, under the comity of nations, to be more favored than our own citizens, to the direct prejudice of creditors residing here. It is, therefore, clear that it must account, for the property converted to its use in Canada, to the assignee, and proof can be made and dividend taken upon the original debt only, without regard to a subsequent judgment thereon. The whole debt of the creditor at the time the bankruptcy proceedings were commenced, shall be considered the debt upon which this principle of equity



among creditors is to operate; that no damages can be allowed to a foreign creditor as against the acceptor of a draft payable here.

The amount proved should not include interest beyond the day of adjudication.—*Bugbee*, vol. 9, p. 258.

## FOREIGN LAWS.

**In Bankruptcy not Enforced to Affect Persons or Property in New York.**

The plaintiffs were trustees in bankruptcy of the firm of Sichel & Co., the members of which firm were residents, and subject to the laws of the kingdom of Belgium, and were adjudged bankrupts in proper proceedings for that purpose in the Tribunal of Commerce of the city of Brussels. As such trustees they claim to recover the value of certain property alleged to have been fraudulently obtained from the said bankrupts. At the trial the plaintiffs were non-suited.

*Held*, That the courts of this State will not recognize or enforce a right or title acquired under foreign bankrupt laws or foreign bankrupt proceedings, so far as affects property within their jurisdiction or demands against residents of this State.

There is no distinction, in this respect, between cases of voluntary and of involuntary bankruptcy.—*Mosselman and Poelaert, Trustees, v. Meyer Caen*, vol. 10, p. 512.

## FOUR AND SIX MONTHS.

See ASSIGNEE,  
ATTACHMENT,  
FRAUDULENT PREFERENCE,  
FRAUDULENT SALE.

**1. Attachment within Four Months.**

An attachment of a bankrupt's goods, under process in a State court, within four months before bankruptcy, is defeated by the provisions of Section 14 of the Bankrupt Act.—*Pennington, Assignee, v. Loenstein et al.*, vol. 1, p. 570.

**2. Over Four Months.**

The provision in the United States Bankrupt Act, U. S. St. of 1867, C. 176, Section 14, that an assignment under the act shall vest in the assignee the title to all the bankrupt's property, "although the same is then attached on *mesne* process," and

"shall dissolve any such attachment made within four months next preceding the commencement of said proceedings" in bankruptcy, does not prevent the enforcement of a judgment against the bankrupt on a portion of his property attached in the action more than four months before he commenced proceedings in bankruptcy.—*Bates v. Tappan*, vol. 3, p. 647.

**3. Idem.**

When the officer's return shows that an attachment was made more than four months prior to the defendant's commencement of proceedings in bankruptcy, the plaintiff is entitled to a judgment, to be satisfied out of the *specific* property returned upon the writ.—*Bowman v. Harding*, vol. 4, p. 20.

**4. Idem.**

Attachment on *mesne* process within four months prior to commencing of proceedings in bankruptcy are dissolved by the commencement of such proceedings.—*Miller v. Bowles et al., Appleton v. Stevers, Assignee*, vol. 10, p. 515.

**5. Distinction as to Application.**

The first subdivision of Section 35 of the Bankrupt Act, with its limitation of four months, applies only to cases of payments or conveyances made to a creditor in consideration of pre-existing debts by way of preference, while the second subdivision applies to other transfers and conveyances, made contrary to the provisions and policy of the Bankrupt Act, or in fraud of the act. The provisions of Section 39 avoiding certain acts are subject to the limitations of four and six months contained in Section 35.—*Bean, Assignee of Kintzing, v. Brookmire & Rankin*, vol. 4, p. 196.

**6. Preference to Creditor.**

A preference to a creditor will not be declared void under the Bankrupt Law, unless made within four months before the filing of the petition.—*Collins, Assignee, v. Gray & Gray*, vol. 4, p. 631.

**7. Restraining Enforcement—Judgment in Attachment.**

The defendant sued the bankrupt to recover a debt, when he knew, or had reasonable cause to believe his debtor was insolvent. Judgment having been rendered upon the default of the debtor, who did not appear or answer to the action, the execution

creditor seized the real estate of the debtor, which was attached on the writ, and proceeded to complete his levy. After rendition of the judgment, and before the levy was completed, the debtor filed his petition in bankruptcy, and his assignee applied to the Bankruptcy Court for an injunction to restrain the defendant from proceeding with his seizure and sale of the estate of the bankrupt on the execution, the attachment being within four months of the commencement of the proceedings in bankruptcy.

*Held*, That the relief prayed for should be granted, and injunction made perpetual.—*Haskell, Assignee, v. Ingalls*, vol. 5, p. 205.

### 8. Judgment Entered within the Four Months.

Where warrant to confess given while solvent, and judgments subsequently entered within four months of the date of filing petition in bankruptcy, and when both the debtor and creditors had cause to believe the debtor insolvent, and intended a fraud upon the provisions of the act, were fraudulent preferences.—*In re Lord*, vol. 5, p. 318.

### 9. Idem.

A confession of judgment, if otherwise invalid under the 35th Section of the Bankrupt Act, cannot be valid for any such reason as, that the power of attorney bore date more than four or six months before any actual mortgage or transfer.—*Hood et al. v. Karper et al.*, vol. 5, p. 358.

### 10. Mortgage made while Insolvent, etc.

A mortgage given when a debtor was insolvent, and when his creditor had reasonable cause to believe him to be so, is void if made within four months of the filing of a petition in bankruptcy, hence money received from the sale of the mortgaged premises must be accounted for to the assignee.—*Sawyer et al. v. Turpin et al.*, vol. 5, p. 339.

### 11. Exchange of Mortgage.

Where a security by way of mortgage is given more than four months before bankruptcy, a change in the former substance of the deeds made within four months of the bankruptcy, will be protected if no greater value were put into the creditor's

hands at that time than he had before.—*Sawyer et al. v. Turpin et al.*, vol. 5, p. 339.

### 12. Fraudulent Conveyance over Six Months.

Land conveyed in fraud of creditors passes to the assignee in bankruptcy of the grantor by virtue of Section 14 of the Act, though conveyed more than six months before the bankruptcy, and is not within Section 35.—*Pratt v. Curtis*, vol. 6, p. 139

### 13. Idem.

A transfer of property that would be void against creditors, irrespective of the Bankrupt Act, may be set aside by the assignee in bankruptcy, though made more than six months prior to the commencement of proceedings in bankruptcy.

The limitation of six months refers only to those transfers which are rendered void by the Bankrupt Act alone.

Where the Act is relied upon to render the transfer void, the condition of the Act (the commencement of proceedings within six months) must be complied with.—*Hyde, Assignee, v. Sontag & Eldridge*, vol. 8, p. 225.

### 14. Void Mortgage Made over Four Months.

A mortgage void on its face as to creditors, may be set aside by the assignee in bankruptcy though made more than four months prior, etc.—*Seaver v. Spink, Assignee*, vol. 8, p. 218.

### 15. Exchange of Individual for Partnership Notes.

Where A holding several notes of B exchanged one of them for notes of the same amount of a firm in which B was a partner, *semble*, this arrangement, if made in contemplation of bankruptcy, would be a fraud on the joint creditors, but,

*Held*, It could not be set aside when the bankruptcy occurred more than four months afterward. — *Lane & Company*, vol. 10, p. 135.

### 16. Judgment within Four Months without Aid of Bankrupt.

A judgment note given for a valuable consideration more than four months before the commencement of proceedings in bankruptcy, on which judgment is entered and execution issued within four months

of the commencement of proceedings in bankruptcy, valid. The case of *Wilson v. City Bank of St. Paul*, 9 N. B. R., 97, cited and followed.—*Sleek et al. v. Turner's Assignee*, vol. 10, p. 580.

#### 17. *Idem* as to Lien.

A lien obtained by a creditor within four months preceding the commencement of proceedings in bankruptcy, the debtor at the time being insolvent, and the creditor knowing this fact, held not to be contrary to the provisions of the Bankrupt Act, it not appearing affirmatively that the bankrupt assisted the creditor to obtain this lien.—*Britton, Assignee, v. Payen & Brennan*, vol. 9, p. 445.

#### 18. Time of Transfer.

A debtor made a transfer of real estate to his brother-in-law, who on the same day re-conveyed the property to the wife of the debtor.

*Held*, That the transfer took place at the time of the actual execution and delivery of the deeds, and not at their date, and was therefore within the six months limited by the Act.—*Rooney*, vol. 6, p. 168.

#### 19. *Idem*.

Where a deed is made by A to B, over six months prior to commencement of proceedings in bankruptcy, but not recorded until within the six months, and the local law of the State is, such deed "shall take effect as to subsequent purchasers and as to all creditors, *only* from the time of record,"

*Held*, This is a transfer of property *within* six months, within the intent and meaning of the Bankrupt Act.—*Thornhill & Co. v. Link*, vol. 8, p. 521.

#### 20. Attachment to Protect Existing Lien.

Where the law recognizes the existence of a lien, and authorizes a provisional attachment of sufficient property to satisfy the final judgment, being to determine simply the amount of the lien, such an attachment is not dissolved by Section 14 of the Bankrupt Act, when issued within four months prior to commencement of proceed-

ings.—*Marshall v. Knox et al.*, vol. 8, p. 97.

#### 21. Continuous Non-Payment of Commercial Paper.

The continued non-payment of commercial paper by a merchant or trader is, as it were, a continuous act of bankruptcy, and not such a final, completed, and definite act that it could not, after the lapse of six months, be made the basis of an adjudication.—*Raynor*, vol. 7, p. 527.

### FOURTEEN DAYS.

See COMMERCIAL PAPER,  
SUSPENSION OF PAY-  
MENT.

#### 1. Prior to Amendment of 1870.

A suspension of payment of commercial paper for fourteen days under Section 39, before the Amendment of July 14, 1870, was *per se* an act of bankruptcy.—*Baldwin et al. v. Wilder et al.*, vol. 6, p. 85.

#### 2. Assignment.

A merchant who stops the payment of his commercial paper cannot prevent the running of the fourteen days, necessary to make this stoppage an act of bankruptcy, by the execution of an assignment for the benefit of all his creditors, previous to the expiration of said period.—*In re Lanier*, vol. 9, p. 494.

### FRAUD.

See ASSETS,  
ASSIGNEE,  
ASSIGNMENT,  
BANKRUPT ACT,  
CONVEYANCES,  
CREDITOR,  
DEBT,  
DISCHARGE,  
EVIDENCE,  
JUDGMENT,  
ORDINARY COURSE  
OF BUSINESS,  
PREFERENCE,  
PROOF OF DEBT,  
SURRENDER.

**FRAUD—**

- I. *Arrest*, p. 416.
- II. *Assets*, p. 416.
- III. *Assignee*, p. 417.
- IV. *Assignment*, p. 417.
- V. *Composition*, p. 418.
- VI. *Constitutional*, p. 418.
- VII. *Conveyance*, p. 418.
- VIII. *Debts*, p. 419.
- IX. *Evidence*, p. 420.
- X. *Homestead*, p. 421.
- XI. *Influencing Proceedings*, p. 421.
- XII. *Insolvency*, p. 421.
- XIII. *Intent*, p. 421.
- XIV. *Judgment*, p. 422.
- XV. *Jurisdiction*, p. 422.
- XVI. *Jury Trial*, p. 422.
- XVII. *Limitation*, p. 423.
- XVIII. *Merger*, p. 423.
- XIX. *Mortgage*, p. 423.
- XX. *Notice*, p. 424.
- XXI. *Ordinary Course of Business*, p. 424.
- XXII. *Payment*, p. 425.
- XXIII. *Preference*, p. 425.
- XXIV. *Proof of Debt*, p. 427.
- XXV. *Reasonable Cause*, p. 427.
- XXVI. *Recovery of Property*, p. 427.
- XXVII. *Representations*, p. 428.
- XXVIII. *Reservation*, p. 428.
- XXIX. *Struggling to keep up*, p. 428.
- XXX. *Suspension of Payment*, p. 429.
- XXXI. *Tax Sales*, p. 429.
- XXXII. *Time*, p. 429.
- XXXIII. *Trader*, p. 430.
- XXXIV. *Transfer*, p. 430.
- XXXV. *Vote*, p. 430.
- XXXVI. *Wife*, p. 430.

**I. Arrest.****1. Reference to Decide Character of Debt.**

The bankrupt was held in the custody of the sheriff of the city and county of New York, under three several orders of arrest. Four actions were pending against the bankrupt in State courts.

*Held*, Proceedings will be stayed, and the testimony ordered to be taken, and certified by a referee as to whether the actions

under which the bankrupt was arrested were for claims that would not be discharged in bankruptcy.—*In re Henry Jacoby*, vol. 1, p. 118.

**2. Liable to—Pending Proceedings.**

A bankrupt is liable to arrest by the civil process of a State court for a debt fraudulently contracted, notwithstanding proceedings are pending in bankruptcy.—*Kimball*, vol. 1, p. 193.

**3. Not Discharged from—though Debt Proved in Bankruptcy.**

A judgment creditor proved the debt in bankruptcy, which was shown by the record of proceedings in the State courts to have been created in fraud. The District Court refused to discharge the bankrupt from arrest and bail, and refused to direct satisfaction of the judgment. Petition to have decision of the District Court reviewed, denied with costs.—*In re Robinson*, vol. 2, p. 342.

**4. Idem—Nor Stayed.**

The pendency of proceedings in bankruptcy against a debtor does not suspend proceedings against him in a State court by the creditor when the bankrupt, who was the last endorser on a note, fraudulently appropriates and embezzles the proceeds thereof, nor can such creditor be restrained by a decree of the United States Circuit Court from proceeding *ex delicto* against the debtor on account of his fraud, for the reason that debts of this nature are expressly excepted from the operation of the Bankrupt Act.—*Horter et al. v. Harlan*, vol. 7, p. 238.

**II. Assets.****5. Resulting Trust Property Fraudulently Purchased.**

The trust resulting in favor of creditors, in real estate held by the wife of a bankrupt, inures as assets to his assignee when such property was purchased by the bankrupt prior to his bankruptcy, and paid for with his own money in fraud of his creditors.—*In re Louis Meyers*, vol. 1, p. 581.

**6. By One Bankrupt to Another.**

Property conveyed in fraud of the creditors of grantor, as between grantor and grantee, vests the title in the grantee, and must be returned in his schedules of property when he has been adjudged a bank-

rupt, and if not so returned he is guilty of concealment.—*In re O'Bannon*, vol. 2, p. 15.

#### 7. Six Months.

Land conveyed in fraud of creditors passes to the assignee in bankruptcy of the grantor by virtue of Section 14 of the Act, though conveyed more than six months before the bankruptcy, and is not within Section 35.—*Pratt v. Curtis*, vol. 6, p. 139.

#### 8. Void under State Statute of Fraud.

Mortgages and bills of sale of personal property, which are void as to creditors under the Statute of Frauds of the State where the transactions occur, are void and convey no title as against the assignee in bankruptcy.—*Edmondson v. Hyde*, vol. 7, p. 1.

#### 9. Before Passage of Act.

Property which had been conveyed by a bankrupt in fraud of creditors prior to the passage of the Bankrupt Law, is to be regarded as vested in the assignee in bankruptcy, by force of that act, and by virtue of the proceedings thereunder.—*Goodwin v. Sharkey*, vol. 8, p. 558.

#### 10. Ineffective to Change of Ownership in Property.

A made a loan to B and delivered to B's agent a package of bank-notes containing the amount of the loan.

At the time the agent of B was instructed to negotiate the loan, B was insolvent, and the contract made by his agent was after his failure, but before the news had reached A. It also appeared that B had then resolved not to pay the bill or note which was given as evidence of the loan; that as soon as A was informed of the failure he endeavored to reclaim the package of notes still in the hands of B's agent; that it was placed in a bank with the seal unbroken, for the benefit of A, and the next day B, in the presence of the president of the bank, expressly disclaimed ownership of the said package and declared that it justly belonged to A.

*Held*, That the assignee in bankruptcy of A had no title to the package of notes, for the reason that fraud is ineffective to change the ownership of property obtained by means of it; that the assignee is invested with the rights of the bankrupt only, subject, of course, to all the equities

which would have affected him if he had not been adjudged a bankrupt.—*Purciance, Assignee, v. Union National Bank of Pittsburgh*, vol. 8, p. 447.

#### 11. Contra.

A, being about to start to Europe, applies to K, a banker, for two five hundred dollar bills in exchange for one thousand dollars of small notes. K declines, under pretense of not having the five hundred dollar bills. A then asks for exchange on New York, and K gives him a cheque for one thousand dollars on a bank in New York, knowing at the time that the New York bank protested his cheques, and that he was largely overdrawn. K, at the time of giving the cheque and receiving the money, being in the act of preparing a petition in bankruptcy, and in consultation with his legal adviser in the private office. A filed a bill setting up the fraud, and alleging that the title to the thousand dollars never vested in K or his assignees, by reason thereof, and claiming to be paid in full.

*Held*, The title to the money vested in K, notwithstanding the fraud, and that A was not entitled to be paid in full, but only to share *pro rata* with the other creditors.—*In re King*, vol. 8, p. 285.

### III. Assignee.

#### 12. May Sue in State Court.

An assignee in bankruptcy may sue in the State, as well as in the United States courts, to recover property disposed of by the bankrupt in fraud of the Bankrupt Act.—*Gilbert v. Priest*, vol. 8, p. 159.

#### 13. In Fraud of Act or Void at Common Law.

An assignee in bankruptcy, by Section 14 of the Act, is empowered to recover property transferred in fraud of creditors by the bankrupt, to set aside conveyances fraudulent at common law, as well as those in fraud of the Bankrupt Act.—*Bean v. Amsink*, vol. 8, p. 228.

### IV. Assignment.

#### 14. Property exceeding Debts.

A debtor whose property exceeds in value all that he owes, for the purpose of paying all his debts, and of securing to himself a maintenance in the future, conveys all his property to another upon an agreement



that the latter should pay all such debts and support the grantor for the residue of his life, such conveyance is not *per se* fraudulent or void as against creditors, nor an act of bankruptcy.—*In re Cornwall*, vol. 6, p. 305.

#### 15. Creating Preferences within Four Months.

A deed of assignment by A to B and C, within four months prior to commencement of proceedings in bankruptcy, of all of A's property in trust, to pay first the debts of B, C, and D in full, and to apply the balance *pro rata* upon the debts of the other creditors, and the amount turned over being insufficient to pay all in full, is void on its face, and a palpable and manifest attempt to prefer B, C, and D, and to evade the provisions of the Bankrupt Act.—*Stobaugh, Assignee, v. Mills & Fitch*, vol. 8, p. 361.

#### V. Composition.

#### 16. Acting under—though technically Defective.

Where a trader makes a compromise with his creditors by making a sale of his stock, giving to the creditors part cash and part notes of the purchaser, the same being done in pursuance of an arrangement made with some of the creditors directly, and others through an agent, there is no fraud on the part of the debtor if an agent of one or more of the creditors exceeds his authority in accepting the compromise and the debtor is ignorant thereof.—*Munger & Champlin*, vol. 4, p. 295.

#### 17. Discriminating between Creditors.

When proceedings were pending in bankruptcy, and a preferred creditor and the insolvent settle the petitioning creditor's debt and employ the attorney who conducts such proceedings to compromise with the other creditors, authorizing him to pay some one price and others another, and it appears that such discrimination was in fact made, such scheme is *prima facie* fraudulent and the burden is upon the actors to show that all the creditors *consented* to such preferences. It will not be presumed. But if any one creditor does not consent it is a fraud upon him, although all the others are satisfied.—*Curran et al. v. Munger et al.*, vol. 6, p. 33.

#### 18. Uberrima Fides.

Parties who sign composition deeds must do so in good faith. Secret preferences paid as inducements to obtain signatures of creditors to composition deeds, can be recovered by the debtor himself, or by injured creditors, or by an assignee in bankruptcy, who represents both debtor and creditor. Such recovery may be at law or in equity.

It is no defense to such an action that the composition deed was invalid, because not signed by all the creditors, pursuant to its terms, it appearing that the greater part of the creditors believed that the composition deed had been signed by all the creditors in good faith.—*Bean, Assignee, Brookmire & Rankin*, vol. 7, p. 568.

#### VI. Constitutional.

#### 19. Fraudulent Disposition of Goods Bought on Credit.

That clause of Section 44 of the United States Bankrupt Act of 1867, which punishes by imprisonment any fraudulent disposition of the goods of a debtor, obtained on credit and remaining unpaid for, within three months next before the commencement of proceedings in bankruptcy, is constitutional and valid. Motion in arrest of judgment on this ground denied, and defendant sentenced to one year's imprisonment.—*United States v. Pusey*, vol. 6, p. 284.

#### VII. Conveyance.

#### 20. Advancement on Fraudulent Conveyances.

Where the general assignee of the bankrupt made certain conveyances of real estate, the administrators of the grantee made application to have the amount paid on the contract of sale refunded, which was denied for the reason that there was a failure to show that the transaction with decedent was made in good faith by the general assignee.—*Mott*, vol. 1, p. 223.

#### 21. Prior to Passage of Act, Vest in Assignee.

When a debtor before the passage of the Bankrupt Act conveyed his property with intent to defraud his creditors, and afterwards was adjudged a bankrupt, his assignee in bankruptcy may maintain an action to recover back such property for



the benefit of the creditors.—*Bradshaw, Assignee, v. Henry Klein et al.*, vol. 1, p. 542.

**22. Idem. Does not Prevent Discharge.**

A fraudulent conveyance made, or a fraudulent preference given before the passage of the Bankrupt Act are neither of them good grounds upon which to oppose a discharge. Such a conveyance or preference does not come within the terms of Section 29 of said Act, and a specification alleging such a conveyance or preference will be stricken out on motion.—*In re Isaac Rosenfield*, vol. 1, p. 575.

**23. Contra.**

A fraudulent sale of property by bankrupt before the passage of the Bankrupt Act is sufficient of itself to preclude his discharge.—*In re Ernest Hussman*, vol. 2, p. 438.

**24. Fraudulent under State Law.**

When a sale or conveyance by the bankrupt before bankruptcy is void as to creditors, under the local statute of the State where he resides and the sale or conveyance is made, the assignee of the bankrupt, who represents in this respect the rights of the creditors, may impeach the same and bring suit for or in respect to property sold or conveyed.—*Allen, Assignee, etc., v. Eliza A. Massey et al.*, vol. 4, p. 248.

**25. Over Six Months Passes to Assignee.**

Land conveyed in fraud of creditors passes to the assignee in bankruptcy of the grantor by virtue of Section 14 of the Act, though conveyed more than six months before the bankruptcy, and is not within Section 35.—*Pratt, Jr., v. Curtis et al.*, vol. 6, p. 139.

**26. Avoided.—All Creditors Share Proceeds.**

In Massachusetts a voluntary conveyance to a wife or child of the grantor by a person much indebted is *prima facie* fraudulent as to existing creditors. If such a deed is set aside by existing creditors, it seems that the land, or its proceeds, are assets for creditors generally. If it should be assets only for a certain class of creditors, yet the assignee is the proper plaintiff to impeach the deed.—*Pratt, Jr., v. Curtis et al.* vol. 6, p. 139

**27. Validity Tested by Circumstances Attending Ratification.**

Where an officer of a corporation, without authority, executed a deed of trust of its property as security for a negotiable instrument, more than four months prior to commencement of proceedings in bankruptcy, and his act is afterwards ratified by the corporation, but within the four months prior to commencement of the proceedings, the validity of the deed must be determined by the circumstances existing at the time of the ratification, and not by those of the time of the original execution.—*Kansas City Stone Mfg. Co.*, vol. 9, p. 76.

**28. "Fraudulent Conveyances."**

The "fraudulent conveyances" mentioned by the Bankrupt Act are those which are void at common law, or such as are denounced by the State statutes, as distinguished from conveyances in fraud of the Bankrupt Law.—*Allen & Co. v. Montgomery*, vol. 10, p. 503.

**VIII. Debts.**

**29. With Intent to Prefer.**

A fraudulent debt must be one made with a view to give a preference.—*Sidle*, vol. 2, p. 221.

**30. Buying Goods.**

The buying of goods fraudulently, or when the debtor knew that he could not pay for them, is not a fraud which will prevent the discharge of a bankrupt.—*Rogers*, vol. 3, p. 564.

**31. Examination of Character.**

Certain creditors of a bankrupt filed their proof of debt, alleging that the debt was created by fraud. On the examination of the bankrupt they proposed to inquire into the alleged fraud.

*Held*, That such inquiry was irrelevant; that a discharge in bankruptcy does not discharge a debt fraudulently contracted; and that the question whether such discharge affects a debt, can only arise and be determined between the parties in a suit prosecuted to collect the debt, in which the discharge shall have been pleaded as a bar to recovery; that the provisions of Section 21 relating to suits against the bankrupt, apply only to a debt which will be dis-

charged by a discharge.—*In re John S. Wright*, vol. 2, p. 142.

### 32. May be Proved.

Such debts may be proved, and the dividend thereon shall be payment on account of said debt. Where a bankrupt contracted a debt through fraud, he continues liable notwithstanding his discharge.—*In re Wright & Peckham*, vol. 2, p. 41.

### 33. Enforcement not Restrained.

A debt created by fraud, in which judgment has been recovered, is not affected by a discharge in bankruptcy; hence the sheriff will not be enjoined from an arrest of the bankrupt in an execution issued on such judgment.—*Patterson*, vol. 1, p. 307.

### 34. Contra.

After a bankrupt had filed his petition in bankruptcy he was arrested, under an order of a State court, on an action to recover a debt that was shown, by affidavits, to have been fraudulently contracted. While he was under arrest an order was obtained from the Bankruptcy Court staying proceedings in the action in which he was arrested. The plaintiffs in the action moved to set aside the stay, although they had not proved their debt before the Register.

*Held*, That their debt was one which could not be discharged by a discharge in bankruptcy, nevertheless it was provable under the 19th Section of the Bankrupt Act.—*Rosenberg*, vol. 2, p. 236.

### 35. Not Ground for Opposing Discharge.

The creation of a debt by fraud is not a ground for refusing a discharge to a bankrupt.—*In re Isaac Rosenfield*, vol. 1, p. 575.

### 36. Idem.

Opposition to discharge grounded upon the fact of debt being fraudulently created, is insufficient.—*Doody*, vol. 2, p. 201.

### 37. Idem.

Objection to discharge based upon the fact that the debt was contracted by fraud, is not good, for such debt will not be affected by the discharge.—*In re Stokes*, vol. 2, p. 212.

### 38. Not Affected by Discharge.

No debt created by a fraud is discharged

by an adjudication of bankruptcy.—*Pettis*, vol. 2, p. 44.

### 39. Idem.

Debts created by fraud are not discharged by the discharge of the bankrupt.—*Bankford*, vol. 2, p. 78.

### 40. Idem.

Debts created by fraud are excepted from the operation of the discharge.—*Clarke*, vol. 2, p. 110.

## IX. Evidence.

### 41. Fraud in Creation of Debt Irrelevant.

Evidence of fraud in the creation of a debt sought to be introduced by a creditor is inadmissible in proceedings in bankruptcy.—*Tallman*, vol. 1, p. 462.

### 42. Idem.

Certain creditors of a bankrupt filed their proof of debt, alleging that the debt was created by fraud. On the examination of the bankrupt they proposed to inquire into the alleged fraud.

*Held*, That such inquiry was irrelevant; that a discharge in bankruptcy does not discharge a debt fraudulently contracted.—*Wright*, vol. 2, p. 142.

### 43. Concealment.

The bankrupt was possessed of two hundred and forty-eight thousand dollars of property, and owed debts amounting to thirty-one thousand dollars; he made a voluntary conveyance of one hundred and ninety-two thousand dollars to his wife, and kept these conveyances unrecorded until his failure.

*Held*, This concealment evidenced such wrongful intent as to avoid the conveyance.—*John S. Beecher, as Assignee, v. Isabella Clark et al.*, vol. 10, p. 385.

### 44. Unexplained Disappearance of Goods.

A was arrested on charge of fraud in procuring goods, in violation of Section 54 of the Bankrupt Law. On a hearing before a United States commissioner, it was shown that the accused was a keeper of a small store, without means or reputation as a merchant, who had succeeded by skillful representations in buying a large amount of goods most of which were disposed of in less than a month's time, so that when the United States marshal took possession of the store but a small portion of the goods

could be found. No books of account or other evidence showing to whom these goods were sold to, or in whose hands placed were found. The accused remained silent and explained nothing.

*Held*, That probable cause was shown to justify the belief that the accused had committed the crime charged.—*United States v. Thomas*, vol. 7, p. 188.

#### 45. Of Partnership.

Where the wife of a bankrupt had with her own money bought out the interest of a retiring member of an insurance broker's firm, which employed the bankrupt ostensibly as clerk, at a percentage of profits in lieu of salary and the shares of the wife and the bankrupt did not exceed the fair remuneration of the bankrupt for his services to the firm, which he was mainly instrumental in building up and conducting, the annual profits whereof were thirty-five thousand dollars,

*Held*, That the bankrupt was virtually a partner. Fraud is scarcely ever made out by direct evidence, hence the proof must be generally arrived at by the interweaving of circumstances.—*Rathbone*, vol. 2, p. 261.

### X. Homestead.

#### 46. Fraudulent Declaration of.

The declaration of the homestead is not to be held operative to prevent creditors from converting the homestead into a fund for their benefit, when such declaration is made in fraud of their rights, as creditors of the bankrupt.—*In re Wm. Henkel*, vol. 2, p. 546.

#### 47. After Avoidance, Fraudulent Deed.

When a deed is set aside as made in fraud of creditors of the bankrupt, the bankrupt retains his homestead right, which passes to his grantee.—DILLON, J., decision in *Coe v. Wilder et al.* followed, reversing *Coe v. Wilder et al.*, 5. N. B. R., 443.—*Smith, Assignee, v. Kehr et al.*, vol. 7, p. 97.

#### 48. Idem.

Although a conveyance may be void as to creditors on the ground of fraud, the grantor is not thus deprived of his right to an exemption out of the property for a homestead.—*William Penny v. A. H. Taylor*, vol. 10, p. 200.

### XI. Influencing Proceedings.

#### 49. Forfeits Claims.

Where it appeared to the court, from the facts shown by the evidence taken on a reference, had on a petition of a supposed creditor, that certain claims of other creditors be disallowed and rejected, that he had purchased claims against the bankrupts to prove as a creditor, while he was, in fact, acting in their interest,

*Held*, All proofs of claims by him, or of claims purchased by him, should be stricken out. A reference will be ordered by the court without any application therefor, by which to ascertain such claims.—*Lathrop et al.*, vol. 8, p. 410.

### XII. Insolvency.

#### 50. General Assignment, while so.

A, being insolvent, sold and transferred to a creditor, with knowledge of the fact, all his real and personal property.

*Held*, That the sale was in fraud of the Act, and the assignee could maintain an action of trover to recover the value of the personal property.—*Foster, Assignee, v. Hackley & Sons*, vol. 2, p. 406.

### XIII. Intent.

#### 51. Assignment to Prevent Preference.

Where creditor is about to recover a judgment, and the debtor makes a general assignment of all his property for the benefit of his creditors, before the judgment is rendered, this is not a conveyance with intent to delay, defraud, or hinder creditors. The innocence or guilt of the act depends on the mind of him who did it, and it is not a fraud unless it was meant to be so.—*Langley v. Perry*, vol. 2, p. 596.

#### 52. To the Sole Creditor.

A conveyance, even though fraudulent, is not made "in contemplation of bankruptcy or insolvency," there being no other creditors, and the debt being secured.—*Johann*, vol. 4, p. 434.

#### 53. In Addition to Insolvency.

To make a payment fraudulent, the debtor must be insolvent and he must intend to prefer his creditor.—*Morgan, Root & Co. v. Mustick*, vol. 2, p. 521.

#### 54. Idem.

To constitute a fraudulent preference

where the alleged bankrupt is claimed to be insolvent, he must so be, and know himself so to be, and actually intend and actually give a preference to a creditor.—*Miller v. Keys*, vol. 3, p. 225.

#### 55. Believing Himself Solvent.

If a debtor honestly believes himself solvent and pays a just debt, such payment cannot be considered fraudulent, though bankruptcy ensue; otherwise, if he is aware of his solvency.—*Morgan, Root & Co. v. Mastick*, vol. 2, p. 521.

#### 56. Made under Pressure.

Where a bankrupt transfers his stock and book accounts in satisfaction of a pre-existing debt to a creditor who threatened to attach his stock and break up his business, such a conveyance is a preference under the Bankrupt Law, though made under pressure.—*Batchelder*, vol. 3, p. 150.

#### 57. Transfer of Entire Property to One Creditor.

The conveyance of the whole of the property of a party to one creditor to secure a pre-existing debt is fraudulent and void, and the party must be presumed to have known the natural consequences of his own act; and the intent to prefer may be inferred from the fact of preference.—*Rison, etc., v. Knapp*, vol. 4, p. 349.

### XIV. Judgment.

#### 58. Bankrupt Solvent when Warrant Given.

A judgment lien perfected by levy is good against the proceeds of sale of lands in hands of assignee in bankruptcy, and is not a fraudulent preference, where the judgment creditor had entered the judgment in question under warrant of attorney, given with a certain promissory note made by the bankrupt, it not being shown that the bankrupt was insolvent at the time he made said note, or that the creditor knew of his insolvency at or before levy made.—*Armstrong v. Rickey Brothers*, vol. 2, p. 473.

#### 59. Contra.

A judgment is fraudulent and void, if the plaintiff knew at the time it was entered up, that the debtor had executed a deed of assignment to said plaintiff and another party.—*Shaffer v. Fritchery & Thomas*, vol. 4, p. 548.

#### 60. Within Four Months.

When a debtor confessed a judgment within four months previous to the filing of the petition against him, being at the time insolvent, and the creditor having reason to believe him so, though there was, as a consideration, a pre-existing debt,

*Held*, To be in fraud of the Bankrupt Act, being in the category of acts prohibited in Section 35.—*Vogls, etc., v. Lathrop*, vol. 4, p. 439.

#### 61. Assignee Entitled to Proceeds.

The net proceeds of the sale of the property under a confession of judgment, in the hands of the sheriff, will be ordered to be paid to the assignee in bankruptcy, where it appears that the creditor had reasonable cause to believe that the firm was insolvent.—*Black & Secor*, vol. 1, p. 353.

#### 62. Cannot be Attacked Collaterally.

A judgment of a State court cannot be assailed in the Bankrupt Court, but the assignee and creditors must resort to the State court, to test its validity.—*Burns*, 1, p. 174.

### XV. Jurisdiction.

#### 63. Bankrupt's Wife and Stranger.

The United States District Court has no jurisdiction over a petition filed by a creditor of the bankrupt, who claims the property by virtue of certain unrecorded mortgages and bills of sale of earlier date than that of a mortgage given to the wife of the bankrupt by a firm of which her husband was a member, to secure the payment of a promissory note given to her by the said firm. The creditor should seek redress and relief by an action at law or suit in equity.—*Barstow v. Peckham, Assignee, et al.*, vol. 5, p. 72.

### XVI. Jury Trial.

#### 64. To Ascertain Fraudulent Intent.

Creditors are entitled to a jury trial where the allegations are that the bankrupt, being insolvent and in contemplation of bankruptcy, had made a fraudulent preference, without having previously specially prayed for such trial.—*Lawson*, vol. 2, p. 396.

XVII. *Limitation.***65. Two Years since Cause of Action Accrued.**

A demurrer to the petition of the bankrupt's assignee, to recover property fraudulently conveyed by one who claims the property by virtue of a voluntary assignment of the debtor, will not be sustained simply on the ground that more than two years have elapsed since the cause of action accrued, and that therefore, it is barred by Section 2 of the present Bankrupt Act.—*Krogman*, vol. 5, p. 116.

**66. Continuous Fraud.**

In an action by an assignee in bankruptcy of a fraudulent debtor, where the fraud was *continuous*, and the debtor remained, down to the time suit was brought, the real owner of the property sought to be recovered, and in possession of it,

*Held*, That the statute did not bar the suit, even though the initial fraudulent transaction took place more than five years before suit was commenced.—*Martin, Assignee, etc., v. Smith et al.*, vol. 4, p. 274.

**67. Time of Accrual.**

Where the bankrupt fraudulently conveyed his lands to avoid a judgment, a purchaser under the judgment and a sale under execution after proceedings in bankruptcy commenced, cannot defend on the ground that the assignee did not commence suit to set aside the execution, sale, and deed within two years after the assignment. No cause of action accrued to the assignee against such purchaser until he acquired his title under the judgment and execution sale.—*Davis v. Anderson et al.*, vol. 6, p. 145.

XVIII. *Merger.***68. In Fraudulent Judgment.**

Creditors petitioned to have debtors adjudged bankrupts. The debt due the creditors had been merged in a judgment which was clearly a fraudulent preference.

*Held*, That the debt having been thus merged it was not a provable debt, and a petition founded upon it could not be sustained. In such a case, however, creditors will be allowed to surrender their preference, and upon their doing so, the acts of bankruptcy being confessed, an adjudica-

tion will be ordered.—*In re Hunt and Hornell*, vol. 5, p. 433.

**69. Judgment.**

Where the ground of a complaint is the fraud in creating a debt, the rendition, with the judgment thereon, does not merge in the original indebtedness so as to free it from taint of fraud, or to permit it to be discharged in bankruptcy; but where the original debt arises in contract, and the fraud is but an incident to the debt and not its creative power, in such case the debt will be merged in judgment and the bankrupt discharged therefrom, where such judgment was obtained prior to the filing of the petition in bankruptcy.—*Benjamin Shuman, Appellant, v. Joseph L. Strauss, Respondent*, vol. 10, p. 300.

XIX. *Mortgage.***70. Machinist of his Tools.**

Where defendants, machinists, executed chattel mortgages of tools, goods, etc., to secure the payment of certain debts due creditors, and suspended payment shortly after.

*Held*, That an order adjudicating them bankrupts should issue.—*Rogers & Coryell*, vol. 2, p. 397.

**71. Taken with Knowledge of Insolvency.**

A, B & Co., creditors, after having received information of the insolvency of C, accepted a chattel mortgage on his stock, subject to a prior mortgage and possession of D, another creditor. The evidence showed that C was insolvent, as represented to A, B & Co. C having been adjudged bankrupt, it was

*Held*, That A, B & Co.'s mortgage was fraudulent, and could not be paid out of the sale of the goods it purported to convey.—*Palmer*, vol. 3, p. 283.

**72. Within Four Months Claim Expunged.**

Where a creditor petitions that debts proved by respondents, who are also creditors, be disallowed, on the ground of having taken a mortgage to secure their debts within four months of adjudication,

*Held*, Debts of respondents disallowed.—*Phelps v. Sterns*, vol. 4, p. 34.

**73. For Excessive Amount.**

Where a mortgage for four thousand



dollars was given, while only one thousand dollars was advanced upon it, and was recorded in full, it is *prima facie* evidence of fraud, and it was therefore

*Held*, That out of the proceeds of sale of the property seized, the marshal pay over to the petitioning creditors, or their attorneys, the amount of their reasonable costs, expenses, etc., incurred in the proceedings in this matter, and that the balance be paid over to the mortgagee.—*Dumont*, vol. 4, p. 17.

#### 74. In an Effort to Continue Business.

The debtor, supported by proof, showed that the transfers were by way of mortgages: that both mortgages were given to secure the same sum (\$1,080), borrowed by the debtor, on the 29th day of October, 1870, from the mortgagee, in order to relieve the debtor's stock in business from a contested attachment, and thus enable the debtor to go on in his business; that the loan was specifically to settle this attachment suit, and also to pay the only over-due paper of the debtor known by the mortgagee to be outstanding except such secured paper as the mortgagee already had.

*Held* valid.—*Sandford*, vol. 7, p. 351.

#### 75. Mortgagor Remaining in Possession.

By statute, in Nevada, a chattel mortgage is void as to creditors unless immediate possession of the mortgaged property be taken and retained by the mortgagee.

*Arguendo*, That, independent of the statute, a mortgage of goods is fraudulent and void as to creditors, if the mortgagor is allowed to remain in possession and sell and traffic with them as his own.—*In re Morrill*, vol. 8, p. 117.

#### 76. Idem, and Dealing without Accountability.

A mortgage covering a stock of merchandise and accounts, which contains no provision by which the proceeds of sales and collections should be either applied to the payment of the debt to be secured, or be reinvested so as to augment the trust-fund, is inconsistent with the alleged purpose of the conveyance, and therefore void upon its face, and fraudulent.—*Smith v. McLean et al.*, vol. 10, p. 260.

#### 77. Exchanging Securities.

Giving a deed of trust upon property to secure a debt previously secured by a mechanic's lien, is merely a change of securities and not a fraudulent preference given to the mechanic having the lien.—*Weater*, vol. 9, p. 132.

### XX. Notice.

#### 78. To Affect Second Vendee.

When it is sought to affect a second vendee with fraud, such fraud must be shown, and the *mere fact*, without more, that he knew that the sale by the bankrupt to the first vendee embraced all the stock of the seller, will not make the purchase of the second vendee fraudulent in law.—*Babbitt, Assignee, v. Walbrun & Co.*, vol. 4, p. 121.

#### 79. Idem.

Where a bankrupt sells to his brother-in-law his entire stock at twenty-five per cent. below cost, and the brother-in-law sells to a stranger at an advance of five per cent. on the purchase-price, informing him at the same time of the circumstances of the purchase, the sale will be set aside at the instance of the assignee.

The second purchaser takes the risk of the title of the first purchaser when informed of sufficient facts to put a prudent man on inquiry.—*Walbrun v. Babbitt*, vol. 9, p. 1.

#### 80. Idem, from Purchaser at Sheriff Sale.

A purchaser, with notice, who acquires his title from a purchaser at sheriff sale, where the first purchaser had the property knocked off to him at a mere nominal sum by a bare-faced fraud (in this case falsely stating the sale was made subject to a mortgage of greater value than the property), takes no better title than his vendor had.—*Harrell v. Beall*, vol. 9, p. 49.

### XXI. Ordinary Course of Business.

#### 81. Prima Facie Fraudulent.

A sale of a stock of goods not made in the usual and ordinary course of business of a debtor, is a *prima facie* evidence of fraud by Section 35 of the statute.—*In re Edwin B. Dean & Thomas F. Garrett*, vol. 2, p. 89.



**82. Forbidden.**

An act which the Bankruptcy Statute declares shall be *prima facie* evidence of fraud, must be deemed to be contrary to its provisions, unless the presumption is repelled by opposing proofs.—*Kingsbury et al.*, vol. 3, p. 318.

**83. Contra—to Curtail Business.**

On a bill in equity brought to set aside the sale and transfer of certain stores by the bankrupts,

*Held*, That from the evidence it appeared that the stores were sold at a fair price, before insolvency, for the purpose of curtailing the business of the bankrupts, and hence the transaction cannot be impeached for fraud.—*Sedgwick, Assignee, v. Wormser*, vol. 7, p. 186.

**XXII. Payment.****84. Prevents Discharge.**

Debtor is not entitled to certificate of discharge if he makes a fraudulent payment.—*Morgan, Root & Co. v. E. C. Mustick*, vol. 2, p. 521.

**85. Assignee may Recover.**

Fraudulent payments may be recovered by bankrupt's assignee.—*Morgan et al. v. Mustick*, vol. 2, p. 521.

**86. For Benefit of Solvent Indorser.**

Where defendant had indorsed the note of bankrupts, payable to the order of himself, which was discounted at a bank. And seven days before the same became due by its terms, the defendant received from bankrupts, who were then insolvent, bills and drafts, with instructions to apply them to the payment of the note, and the same were accepted by the bank as payment,

*Held*, That the bank was not the party benefited by the payment, as the defendant, being solvent, his indorsement made them wholly safe; that the defendant was the person "to be benefited by the payment," whether made before or after maturity of the note, and that he, having reasonable cause to believe them insolvent at the time of such payment, any appropriation of their means to pay or indemnify him is condemned by the statute, and that defendant was liable to the assignees of the bankrupts for the amount paid by him. *Buchman v. Thorner*, vol. 3, p. 118.

**87. By Insolvent is Illegal.**

If the debtor is cognizant of his own insolvent condition, and expects to stop payment, and makes a payment, or gives security to a creditor for a just debt, with a view to give a preference, such payment, or giving of security, is fraudulent as against creditors, and property thus transferred may be recovered by the assignee in bankruptcy, and the debtor's discharge will be denied.—*Gregg*, vol. 4, p. 456.

**88. Contra, if Made over Four Months.**

A payment made by a debtor who is in insolvent circumstances, more than four months before the filing of the petition in bankruptcy by or against him, although made to the creditor by way of preference, will be sustained as against the assignee, under the provisions of the first clause of Section 35 of the Bankrupt Act.—*Bean v. Brookmire & Rankin*, vol. 4, p. 196.

**89. To Creditor by Debtor of Bankrupt.**

A, being insolvent, owing C, and being owed to by B, gets B to pay C directly.

*Held*, This transfer was as much subject to the provisions of the Bankrupt Act as if A had received the money from B, and then afterwards paid a similar amount. A payment by B, at A's request, to C, was in law a payment to A.—*Smith v. Little*, vol. 9, p. 111.

**XXIII. Preference.****90. Definition.**

By the term "fraudulent preference," used in item 9 of Section 29, is meant only a preference in fraud of the Bankrupt Act, that is, contrary to its provisions.—*In re Isaac Rosenfield*, vol. 1, p. 575.

**91. Act of Bankruptcy.**

Every failing debtor who gives a preference to a part of his creditors, thereby commits an act of bankruptcy, and a judgment that he is a bankrupt must follow.—*John T. Drummond*, vol. 1, p. 231.

**92. What Preference Allowed.**

Preference in a Bankrupt Court must rest either on a lawfully acquired lien, created before the filing of a petition, by or against the bankrupts, or else the consideration therefor must have been unequivocally in aid of the assignee after adjudication, or in aid of the proceeding in

bankruptcy.—*In re Nounnan & Co.*, vol. 7, p. 15.

### 93. Deposit with Bank as Security.

The respondents, assignees of a bankrupt, brought an action against the appellants' bank to recover a sum belonging to the bankrupt, and alleged to have been in the appellants' hands at the date of adjudication of bankruptcy.

The said sum, in pursuance of an agreement between them and the bankrupt, previously to adjudication, had been carried by the appellants to a special account, as security against bills not yet at maturity, drawn by the bankrupt and discounted by the appellants.

*Held*, That the action failed, since by the contract the sum claimed formed no part of the bankrupt's estate, but was rightly in the hands of the appellants at the time of the action.

Fraudulent preference, under such circumstances, could have no application to the case.—*Chartered Bank of India, Australia, and China v. Evans et al.*, vol. 4, p. 186.

### 94. To Individual, over Corporate Creditors.

An intent to give a preference to individual creditors over persons who might charge the debtor with liability for the debts of a corporation, is not such a fraudulent preference as can be impeached under the Bankrupt Law, as an intent to defraud creditors.—*Cookingham, Assignee, v. Ferguson & Ferguson*, vol. 4, p. 636.

### 95. Entirety of Claim.

An open running account for merchandise sold, consisting of various items of charges and credits at different times, on which was credited the amount at which property was purchased by way of fraudulent preference, leaving a balance which was proved up before the Register against the bankrupt's estate, was held *prima facie* to be but a single debt or claim, and, by reason of such preference, disentitled to any dividend on any part thereof.—*In re Richter's Estate*, vol. 4, p. 222.

### 96. Transfer Preventing Equal Distribution.

A transfer by an insolvent debtor with a view to secure his property, or any part of it, to one creditor, and thus prevent an

equal distribution among all his creditors, is a transfer in fraud of the Bankrupt Act.—*Toof et al. v. Martin*, vol. 6, p. 49.

### 97. Entering Judgment on Confession prior to June, 1867.

A confession of judgment entered before the 1st day of June, 1867, but after the enactment of the Bankrupt Law, is a fraudulent preference, when both parties knew of the insolvency of the debtor.—*Traders' National Bank of Chicago v. Campbell, Assignee*, vol. 6, p. 353.

### 98. Securing Copartner, by Transfer from Assets.

A and B are copartners. Upon dissolution, A bought B's interest, and gave his notes for \$7,000, secured by a chattel mortgage on the stock on hand, and thereafter to be acquired. It was agreed the mortgage was not to be filed within a year. Just before the expiration of a year, A transferred his stock, notes, and accounts, worth some \$12,000 to B, in payment of the \$7,000 notes, B agreeing to pay the firm debts, which were about \$5,000. A was adjudged a bankrupt, and his assignee filed his petition praying the court to compel B to surrender his preference.

*Held*, That under the facts of the case, the \$7,000 was a fraud as against the creditors of A, and that B should be allowed to prove for the \$5,000 only.—*Stephens*, vol. 6, p. 533.

### 99. Refusing to Surrender.

A creditor, who receives money and merchandise from his debtor, knowing him to be insolvent, is guilty of obtaining a fraudulent preference; hence, if he refuses to surrender to the assignee the property and money so received, he cannot prove his claim, and must pay the costs of the proceedings by the assignee to compel him to relinquish his preference.—*In re Forsyth & Murtha*, vol. 7, p. 174.

### 100. When it is Necessary Result of Act.

The president of a bank, being informed, before the suits were commenced, that if the bank should press the debtor for payment it would embarrass him, and having other evidence of his insolvency, had reasonable cause to believe his debtor insolvent; that the debtor and creditor both knew that if judgments were ob-

tained, and execution and levy thereunder was made, the bank would thereby obtain a preference over the other creditors whom the debtor was unable to pay, and hence there was an intent to give a preference within the meaning of the Bankrupt Act, and that the conduct of the bank was a fraud upon the said Act.—*Warren v. Tenth Nat. Bank et al.*, vol. 7, p. 481.

#### 101. Transfer to Creditor of Property in Excess of Debt.

Where an insolvent debtor, in a State where he might legally prefer one creditor to another, in June, 1868, transferred to his creditor property of the value of fifty-seven thousand dollars on debt of thirty-six thousand dollars,

*Held*, The transfer of so much of the property as was in excess in value of the debt, was void as in fraud of creditors, by common law.—*Mitchell v. McKibbin*, vol. 8, p. 548.

### XXIV. Proof of Debt.

#### 102. Debt Created by Fraud may be.

A debt created by fraud is provable under the Bankrupt Act. Where amount due to a creditor is in dispute in a State court, the Court of Bankruptcy may allow the suit to proceed for the purpose of ascertaining the amount due, but execution will be stayed if the debt is such as will be discharged by a discharge in bankruptcy.—*In re Rundle v. Jones*, vol. 2, p. 113.

### XXV. Reasonable Cause.

#### 103. Chattel Mortgage.

Debtors, merchants, knew themselves to be insolvent, but represented to creditors on debts past due that they were solvent. The creditors, however, exacted as security a chattel mortgage, dated May 9th, 1868, on a large portion of debtors' goods, and on a failure to receive payment of an installment thereunder, took possession on the 15th of July, 1868, under the mortgage, sold the goods, and applied the proceeds. Thereafter, on August 3, 1868, debtors filed petition in bankruptcy, and were duly adjudged bankrupts. Assignee in bankruptcy brought action against the creditors to recover the value of the goods so sold.

*Held*, Said mortgage was within the meaning of Section 35 of the statute, made

by the bankrupts with a view to give a preference.

The creditors had reasonable cause to believe that their debtors were insolvent when the mortgage was made, and it constituted a fraudulent preference.—*Driggs, Assignee, v. Moore, Foote & Co.*, vol. 3, p. 602.

#### 104. Idem, Creditor Knowing of Insolvency.

If an insolvent gives a mortgage to a creditor who has reasonable cause to believe him insolvent, the fraud upon the Bankrupt Act is complete as to both.—*Hall, &c., v. Wager & Fales*, vol. 5, p. 182.

#### 105. At Time of Entering Judgment.

Where a debtor gave to his creditors several bonds with warrants of attorney to confess judgments, for money lent in good faith, when neither the borrower nor lender had reasonable cause to believe that the debtor was insolvent or intended any fraud upon the provisions of the Bankrupt Act,

*Held*, That judgments subsequently entered thereon, within four months of the date of filing petition in bankruptcy, and where both the debtor and the creditors had cause to believe the debtor to be insolvent, and intended a fraud upon the provisions of the act, were fraudulent preferences.—*In re Lord*, vol. 5, p. 318.

#### 106. Notice of Acts to Cause Inquiry.

To defeat a mortgage, as void under the Bankrupt Act, on the ground of preference, it is enough if the mortgagees had reasonable cause to believe the bankrupt insolvent, and if they had notice of the various acts and circumstances sufficient to put them on inquiry, they are chargeable with the knowledge which an investigation of the bankrupt's condition would have developed.—*Burfee*, vol. 9, p. 314.

#### 107. At Time of Receiving Payment.

That a creditor receiving payment with "cause to believe" his debtor insolvent, is presumed to *know* that such debtor thereby intended a fraud upon the Act.—*Brooke v. McCracken*, vol. 10, p. 461.

### XXVI. Recovery of Property.

#### 108. Transfer Void under State Statute of Fraud.

A transfer of property which is void by the terms of the statute of the State where

such transfer is made, is also void under the Bankrupt Law, as the United States Supreme Court will follow the construction given to such statute by the highest court in the State.

The assignee was authorized by the express terms of the 14th Section of the Bankrupt Act to pursue the property thus attempted to be transferred.—*Massey et al. v. Allen, Assignee*, vol. 7, p. 401.

#### 109. Right of Creditor upon Neglect of Assignee.

A confessed a judgment in favor of his wife, and executed a conveyance to B of certain real estate, who afterwards re-conveyed it to A's wife, with the fraudulent purpose and intent, as it was alleged, to defraud A's creditors. He was subsequently adjudged a bankrupt, and one of his creditors filed a bill in equity alleging the above facts. The defendants interposed the statute limitation of two years, provided for in the 2d Section of the Bankrupt Act, against the relief prayed for.

*Held*, That if the charges made in the bill be true, and were known to the assignee, it was his duty to have filed the bill so as to subject the land and other property which has been fraudulently covered up by the proceedings, to the payment of the debts and demands proven against the estate, and if he (the assignee) refused, any creditor who had proved his debt had a right to apply to the court for an order directing proceedings to be taken for that purpose; but that the bill was filed too late.—*Freeland & Gerson v. Holloman et al.*, vol. 9, p. 331.

#### XXVII. Representations.

##### 110. In Compositions.

A debtor who seeks to make a composition of his debts by the payment of a part only of what he owes, is not bound to make any representations concerning his assets or resources; but he must act in good faith, and if he does make any such representations, he must make them truly or he will be guilty of fraud.—*Elfeit et al. v. Snow et al.*, vol. 6, p. 57.

##### 111. Of Intention to Pay for Goods.

A debt is created by fraud, when one, intending not to pay for goods, induces their owner to sell them to him on credit,

by fraudulently representing or causing the owner to believe he intends to pay for them, or by fraudulently concealing the intent not to pay.—*Stewart v. Emerson*, vol. 8, p. 462.

#### XXVIII. Reservation.

##### 112. Sale by Debtor in Failing Circumstances.

A debtor in failing circumstances cannot sell and convey his land, even for a valuable consideration, by deed, without reservations, and yet secretly reserve to himself the right to possess and occupy it, for even a limited time, for his own benefit. Nor will this rule of law be changed by the fact that the right thus to occupy the property for a limited time is a part of the consideration of the sale, the money part of the consideration being, on this account, proportionately abated.—*Lukins v. Aird*, vol. 2, p. 81.

#### XXIX. Struggling to keep up.

##### 113. Although Insolvent.

Although insolvency exists, yet, if the debtor honestly believes he shall be able to go on in his business, and with such a belief pays a just debt without a design to give a preference, such payment is not fraudulent, although bankruptcy should subsequently ensue.—*In re Gregg*, vol. 4, p. 456.

##### 114. To Stop Bankruptcy Proceedings.

Efforts by the bankrupt's friends to compromise and buy up his debts, and stop proceedings in bankruptcy, are no fraud upon the Bankrupt Act, and are no reason why the debts should be postponed and not voted upon for the election of assignee.—*Frank*, vol. 5, p. 194.

##### 115. To Prevent Protest.

Where the intent of the bankrupt, in making sale of his goods, was to carry on his business to pay his maturing obligations, such sale cannot be set aside, even though made, to one knowing of his insolvency, at a price below cost.

The fraudulent intent on the part of the seller is, in every case, an essential requisite to establish the invalidity of a transfer of property.—*Sedgwick v. Lynch*, vol. 8, p. 289.

XXX. *Suspension of Payment.*116. **Although Stoppage not Fraudulent.**

It is not necessary to show the stoppage of payment of commercial paper was fraudulent; suspension of payment and non-resumption within fourteen days is all that is contemplated by this provision of the Bankrupt Act.—*In re Walter C. Cowles*, vol. 1, p. 280.

117. **Idem.**

That the words "fourteen days," as used in the 39th Section of the Bankrupt Act, do not necessarily apply to the case of a *fraudulent* stoppage of the payment of commercial paper.—*Thompson & McClallen*, vol. 3, p. 184.

118. **Contra.**

The suspension of payment by a manufacturing company, and non-resumption of payment within fourteen days, does not of itself constitute an act of bankruptcy, unless such suspension is fraudulent.—*In re Jersey City Window Glass Co., ex parte, R. B. Wigton*, vol. 1, p. 426.

119. **Idem.**

A suspension of payment of commercial paper for fourteen days is not, in the absence of fraud, an act of bankruptcy.—*In re William Leeds*, vol. 1, p. 521.

120. **Suspension Fraudulent—the Fourteen Days Need not Elapse.**

If a debtor is guilty of fraudulently suspending the payment of his commercial paper, proceedings may be immediately taken by his creditors to have him adjudged a bankrupt without waiting for the lapse of fourteen days. The Bankrupt Act, Section 39, provides for two classes of cases—a fraudulent suspension, and a suspension of payment for fourteen days without resumption—for either of which a merchant or trader may be adjudged a bankrupt.—*Sohoo*, vol. 3, p. 216.

121. **Suspension Fourteen Days Prima Facie Fraudulent.**

A suspension of payment of his commercial paper by a solvent trader, and non-resumption of such payment within a period of fourteen days, is *per se* fraudulent, and is an act of bankruptcy.—*Hardy, Blake & Co. v. Bining & Co.*, vol. 4, p. 262.

122. **Idem for Six Months.**

On mere proof that a trader, within six months before a petition in bankruptcy was filed against him, failed to pay his commercial paper for fourteen days, and did not resume payment thereof till such petition was filed, the *prima facie* presumption is that such failure was fraudulent; and such proof casts on him the burden of rebutting that presumption of fraud by satisfactory evidence.—*Heinsheimer et al. v. Sheu & Boyle*, vol. 3, p. 187.

123. **Must be of Commercial Paper.**

To constitute an act of bankruptcy, the fraudulent stoppage and non-resumption of payment must be of commercial paper given by the debtor in his character as a merchant or trader.—*McDermott Patent Bolt Manufacturing Company*, vol. 3, p. 126.

XXXI. *Tax Sales.*124. **Vitiated by.**

The statute of 1860 makes the sales of tax collectors thereafter had valid to all intents, except for fraud or mistake in the assessment or sale, or unless the tax has been paid.—*Meeks v. Whately*, vol. 10, p. 498.

XXXII. *Time.*125. **Record of Conveyance within Six Months.**

Where a deed is made by A to B, over six months prior to commencement of proceedings in bankruptcy, but not recorded until within the six months, and the local law of the State is, such deed "shall take effect as to subsequent purchasers and as to all creditors, *only* from the time of record,"

*Held*, This is a transfer of property *within* six months, within the intent and meaning of the Bankrupt Act.—*Thornhill & Co. v. Link*, vol. 8, p. 521.

126. **Transfer when Consummated.**

A debtor made a transfer of real estate to his brother-in-law, who, on the same day, reconveyed the property to the wife of the debtor.

*Held*, That the transfer took place at the time of the actual execution and delivery of the deeds, and not at their date, and was therefore within the six months limited by the Act.—*In re Rooney*, vol. 6, p. 163.



XXXIII. *Trader.***127. Not Free of Liability by Fraudulent Transfer.**

A trader gave promissory notes in part payment of purchases of goods, and, before they fell due, sold out the balance of his stock in gross, without invoice, at ten o'clock at night, to a purchaser, for ten hundred and thirty-two dollars cash, and went out of business, after paying one of the notes before maturity. He failed to pay the other notes at maturity, and they remained unpaid for more than fourteen days.

*Held*, It was no defense that the debtor ceased to be a trader at the period of suspension. The sale for cash was not a sale made in the ordinary course of business. The suspension of payment of his paper was fraudulent, and he must be adjudicated a bankrupt.—*Davis v. Armstrong*, vol. 3, p. 33.

XXXIV. *Transfer.***128. Partnership Property to Pay Individual Debt.**

An agreement to sell an individual certain specific articles expressly for his individual use and consumption, to be paid for out of the partnership goods of the firm, is void as to the other partners.

Such an arrangement made without the knowledge, assent, or approval of his copartners, is therefore fraudulent and void as to them.—*Taylor, etc., v. Rasch & Bernart*, vol. 5, p. 399.

**129. Idem.**

Where a partner interested in a firm has but small individual property, and within four months prior to the commencement of proceedings in bankruptcy gives to his creditors, with assent of his copartners, a note of his firm in settlement of his own individual note, this is a fraud upon the joint creditors, and will be set aside by a Court of Bankruptcy.—*In re G. H. Lane & Co.*, vol. 10, p. 135.

XXXV. *Vote.***130. Creditor Receiving Preference not Allowed to.**

A creditor who had received a conveyance of property made with intent to defeat or delay the operation of the Bankrupt Act,

having reasonable cause to believe a fraud on the Bankrupt Act was intended, cannot prove his claim and vote for assignee.—*Chamberlain*, vol. 3, p. 710.

XXXVI. *Wife.***131. Transfer to while Insolvent.**

The petition of the bankrupt was filed May 19, 1868. In January of that year he conveyed two parcels of land, and a fractional share in three several schooners, to his wife.

*Held*, That the conveyances were made after his insolvency became known to him, that he thereby committed a fraud upon the Act, and that his discharge must be refused.—*Adams*, vol. 3, p. 561.

**132. When it will Embarrass Husband.**

A voluntary conveyance, settling property upon the wife and family of the grantor, will be considered fraudulent as to his subsequent creditors if the grantor be indebted at the time to such an extent that the settlement will embarrass him in the payment of his debts, though the debts due may be subsequently paid in the course of business.—*Antrim's Assignee v. Kelly et al.*, vol. 4, p. 587.

**133. On the Eve of New and Hazardous Business.**

A person about to engage in a new business, may not, with a view thereto and for the purpose of securing his property for the benefit of himself and his family, in the event of losses occurring in such new business, convey such property to his wife, voluntarily without consideration. Such a conveyance is fraudulent and void as to subsequent creditors.—*Cass v. Phelps et al.*, vol. 5, p. 452.

**134. Idem.**

One who, though solvent, while weak and unsteady in his pecuniary matters, makes a settlement on his wife as an anchor in case of his failure in business, commits a fraud upon his creditors, and it will be set aside. Where a settlement is made by a bankrupt on his wife, in fraud of his creditors, this, though voidable by the assignee in bankruptcy, is not void *ab initio*. And one, purchasing of the wife for value without notice, will be protected.—*Sedgwick v. Place*, vol. 10, p. 29.



**135. Separation and Reconciliation.**

Where, upon an agreement for a separation between husband and wife, the husband makes a settlement upon the wife, and she, through a trustee, consents to relinquish her dower, and to indemnify the husband against her debts, the deed is for a consideration valuable in law, and will be good as against creditors; but if the parties come together and set aside the articles of separation, although stipulating that the settlement shall stand, the consideration of the deed ceases to be valuable, and becomes voluntary, and, as against creditors, will be void.

When a deed, fraudulent as to prior creditors of the grantor is set aside, all creditors prior and subsequent share in the fund *pro rata*.—*Smith, Assignee, v. Kehr et al.*, vol. 7, p. 97.

**136. May Claim Dower, though Joining Husband in Fraudulent Conveyance.**

As against the assignee in bankruptcy, the wife is not barred or stopped to claim dower, by reason of her having joined her husband in a deed which is fraudulent, as to creditors, and which has, for this reason, been set aside at the instance of the assignee.

A similar principle was applied under the statute of Missouri to the *homestead exemption* right, which, as against the assignee in bankruptcy, was held not to be forfeited by the making of a fraudulent conveyance, which was set aside at the instance of the assignee.—*Cox v. Wilder et al.*, vol. 7, p. 241.

## GAMING.

See DISCHARGE,  
EXAMINATION,  
MISDEMEANOR,  
PENALTIES.

**1. Subsequent to Petition.**

Where a bankrupt under examination, on being asked whether he had lost property at gaming, objected to the question, the Register overruled his objection; but the bankrupt refused to answer.

*Held*, The question was broad enough to cover time subsequent to commencement of proceedings in bankruptcy, and was

therefore improper.—*In re Charles G. Patterson*, vol. 1, p. 152.

**2. Property so Acquired Assets.**

Property acquired in gaming is assets, which, if the bankrupt spends in gaming he loses his discharge.—*In re Marshall*, vol. 4, p. 106.

## GENERAL ORDERS.

See COURTS.

**District Court Cannot Make General Rules.**

The United States District Court has no power to make general rules, such power being vested elsewhere by Section 10 of the Bankrupt Act.—*In re Kennedy & Macintosh*, vol. 7, p. 837.

## GOLD COIN.

See CONTRACT.

**In California, when not otherwise Specified.**

A decree that payment should be made in gold coin is just and proper, as all business transactions in California are based on coin values, and if the value had been found in currency, the amount would have been increased so as to equal the value as actually found in coin, hence the defendant is in no way injured by the judgment for coin.—*Edmondson v. Hyde, Assignee*, vol. 7, p. 1.

## GROWING CROPS.

See SCHEDULES.

**Entered on Schedule of Personal Property.**

Growing crops unmaturing should be entered by the bankrupt on his schedule of personal property.—*In re Schumpert*, vol. 8, p. 415.

## GUARDIAN.

See FIDUCIARY DEBT.

**Not Released by Discharge in Bankruptcy.**

C. was duly appointed guardian of M., a minor, upon giving the usual bond. Some time thereafter C. became a non-resident, and was removed from the guardianship.

He was shown to have had a consider-

able amount of money in his hands belonging to his ward, for which he never accounted.

Judgment was recovered against one of the bondsmen June 15, 1869, which was fully satisfied December 20, 1870.

C. was adjudged a bankrupt and obtained his discharge December 8, 1868.

The surety brought an action against C. to recover the money paid by him on account of C.'s defalcation, and as a defense C. interposed his discharge in bankruptcy.

*Held*, That the defalcation of the defendant C., on his bond as guardian, constituted beyond all controversy, a debt which was created while he was acting in a fiduciary capacity, and was therefore excepted from the operation of his discharge in bankruptcy, hence, there is no reason why the surety for the same debt should not retain all his rights against the principal.—*Halliburton v. Carter, Respondent*, vol. 10, p. 359.

## HABEAS CORPUS.

See ARREST,  
COURTS,  
DEBT,  
DISCHARGE,  
FRAUD,  
JURISDICTION.

### 1. Prisoner not Released where Debt Contracted in Fiduciary Capacity.

R. deposited goods with S. in New Orleans in 1860, for sale on commission. S. did not account therefor, and was adjudged bankrupt in Louisiana, on his own petition, in June, 1867, and mentioned his debt to R. in his schedules. R. sued S. in May, 1867, for damages in New York courts, and obtained judgment, and in September, 1867, while S. was in New York City, caused his arrest. S. sued out a writ of *habeas corpus*, to be discharged by the Bankruptcy Court, on the ground that the debt was provable and dischargeable in bankruptcy.

*Held*, That the debt was created while S. acted in a fiduciary character, and was not dischargeable in bankruptcy.—*In re James W. Seymour*, vol. 1, p. 29.

### 2. Where Prisoner Arrested before Proceedings in Bankruptcy.

A bankrupt arrested and imprisoned be-

fore the proceedings in bankruptcy have commenced, cannot be released by the court, upon a petition for a writ of *habeas corpus*.—*In re William A. Walker, Petitioner for a writ of habeas corpus*, vol. 1, p. 318.

### 3. In Cases of Deceit.

Where a bankrupt is held under arrest upon State process in an action of tort, in the nature of deceit, it being alleged in the declaration that he obtained possession of the plaintiff's goods under color of a contract, by means of false and fraudulent representations, the United States District Court has no power to discharge the bankrupt upon a petition for a writ of *habeas Corpus*.—*Devoe*, vol. 2, p. 27.

### 4. District Court Cannot go behind Arrest Papers.

Where bankrupts were under arrest by the sheriff upon process of State court, it was, on *habeas corpus*,

*Held*, That the United States District Judge cannot in such case properly inquire into the fact whether the debt or claim upon which the order of arrest was founded was or was not one from which the bankrupts could be discharged by a discharge in bankruptcy, or whether the bankrupts were liable by the State law to arrest; but he has solely to determine whether the State court, in its order of arrest, intended to found it on a claim or debt not dischargeable in bankruptcy.

It being determined from an examination of the plaintiff's affidavit, on which the order of arrest was founded, that the court had so intended,

*Held*, The prisoners should be remanded to the custody of the sheriff.—*Valk*, vol. 3, p. 278.

## HOMESTEAD.

See AMENDMENT,  
ASSIGNEE,  
BANKRUPT ACT,  
CONSTITUTIONALITY,  
EXEMPTION,  
FRAUD,  
LIEN,  
MORTGAGE.

### 1. Responsibility of Assignee.

Where bankrupts claimed under the State law, and the assignee attempted to

set apart homesteads out of their real estate, and the creditors excepted to the assignee's report in that respect,

*Held*, That the bankrupts were not so entitled, and a failure or refusal by the assignee to sell the real estate in question for the benefit of creditors makes him responsible.—*Jackson & Pearce*, vol. 2, p. 508.

## 2. Additional Exemption under Amendment of 1872.

A bankrupt, whose petition was filed in May, 1871, and had been allotted an exemption, in August, 1871, under the provisions of the Bankrupt Act as it then stood, applied, after the amendment of June, 1872, for the additional exemptions allowed by that amendment.

*Held*, That he was entitled thereto.

*Held further*, That where the real estate had been sold prior to June, 1872, the bankrupt was entitled to an exemption out of the proceeds of said real estate in the hands of the court, equal to the amount of real estate he would have been entitled to retain had his petition not been filed until after June, 1872.—*Vogler*, vol. 8, p. 132.

## 3. Rights of Parties can be Determined only in Bankruptcy Court.

When the United States courts, under the Bankrupt Act of 1867, have acquired jurisdiction of the estate of a bankrupt, the State courts lose jurisdiction of all claims against him provable under the Bankrupt Act, except specific liens upon his property, and legal or equitable claims of title thereto; and the homestead and exception provisions of the Constitution of 1868 of Georgia do not create such a specific lien upon, or title to his estate, in favor of his family, as may be heard and adjudicated by the State courts pending the proceedings in bankruptcy.

Whether said claim is such a debt, in favor of the family, as may be proven before the Bankrupt Court, independently of the exception granted by the Bankrupt Law to the bankrupts, it is for that court alone to decide.—*Woolfolk v. Murray*, vol. 10, p. 540.

## 4. May be Claimed after Fraudulent Conveyance Avoided.

When a deed is set aside as made in fraud of creditors of the bankrupt, the

bankrupt retains his homestead right, which passes to his grantee.—*Smith, Assignee, v. Kehr et al.*, vol. 7, p. 97.

## 5. Idem.

Under the statute of Missouri the *homestead exemption* right, as against the assignee in bankruptcy, was held not to be forfeited by the making of a fraudulent conveyance, which was set aside at the instance of the assignee.—*Cox v. Wilder et al.*, vol. 7, p. 241.

## 6. Idem.

*Held*, That the conveyance was void, that the lands mentioned were subject to the payment of the debts of the bankrupt as they stood at the time the petition was filed, *subject to his homestead right*.—*Fisher, Assignee, v. Henderson et al.*, vol. 8, p. 175.

## 7. Idem.

Although a conveyance by a father to his son may be void as to creditors on account of fraud, the father is not thus deprived of his right to an exemption out of the property for a homestead.—*Penny v. Taylor*, vol. 10, p. 201.

## 8. Mortgagee Making Advance Protected.

The *cestui que trust* under a trust deed to secure present loans and subsequent advances will be protected as to such advances against the claims of the borrower, who has declared the land a homestead, and has subsequently obtained such advances and fraudulently concealed his declaration of homestead.—*In re Hauke*, vol. 7, p. 61.

## 9. Head of a Family.

Where bankrupt, residing in Georgia, rented a house, hired servants, and made his home therein with a widow not related by blood to him, but whom he and his wife had educated and regarded as their adopted daughter, but had failed to adopt her in accordance with law,

*Held*, That he is head of a family, and entitled to exemption as such of fifty acres of land as a homestead, but is not entitled to five acres additional for each of three children of the widow residing with them, and forming part of the household, inasmuch as he is not legally bound to support them.—*Taylor*, vol. 3, p. 158.

**10. Idem, Need not be Sole Owner of Fee.**

Under the statute of Nebraska relating to the homestead exemption, the head of the family need not be the sole owner of the fee; it is sufficient, if the other requisites concur, that he has such an interest in the land as may be sold on execution.

The right to the homestead exemption is not lost by the delay of the husband to claim it until an order is applied for by the assignee in bankruptcy to sell the property for the benefit of the estate.—*Bartholomew, Assignee, v. West et al.*, vol. 8, p. 12.

**11. Bachelor.**

An unmarried man, a bankrupt, having orphan children bound to him under the apprentice laws of Texas, and keeping house, hiring servants, and conducting a household, claimed a homestead of one hundred acres, as head of a family, by the laws of Texas. The assignee set apart the same, but afterwards made a motion to have the award set aside as unauthorized.

*Held*, That the bankrupt was not entitled to such homestead as head of a family.

Amount thereof set aside, and fifty acres ordered to be set apart to him as a citizen, under the Texas laws, not to exceed in value five hundred dollars.—*Summers*, vol. 8, p. 84.

**12. In California, one Insolvent not Entitled.**

The Homestead Act of California contemplates the selection of a homestead out from an entire estate which was sufficient to pay all the just debts of its owner, and leave a surplus equal to the value of the homestead declared.

The declaration of the homestead is not to be held operative to prevent creditors from converting the homestead into a fund for their benefit, when such declaration is made in fraud of their rights, as creditors of the bankrupt.—*In re Wm. Henkel*, vol. 2, p. 546.

**13. When not Exempted from Levy and Sales under Execution.**

A recovered a judgment against B in 1866. Several years thereafter an execution thereon was issued and placed in the hands of the sheriff, who refused to make a levy on certain real estate belonging to B, assigning as a reason that the premises had been set off to B under a State statute ap-

proved October 18th, 1869, entitled an Act to set apart a Homestead, etc.

A then petitioned the Supreme Court of the county for a writ of mandamus to compel the sheriff to make the levy, which was refused. The case was carried to the Supreme court of the State which affirmed this judgment.

On appeal to the United States Supreme Court,

*Held*. That the legal remedies for the enforcement of a contract which belong to it at the time and place where it is made, are a part of its obligation; that a State may change them provided the change involves no impairment of a substantial right, and that the act in question was therefore void.—*Gunn v. Barry*, vol. 8, p. 1.

**14. Leasehold Property.**

Under the Statutes of Missouri, in force prior to March 1, 1864, a homestead to the value of \$1,000, when owned by the head of a family, was exempt from execution. The exemption applied to an estate for years, when owned by the defendant in execution, and such an estate, when sold by the assignee in bankruptcy, is subject to the exemption, and the assignee will be ordered to pay over the sum of \$1,000 to the bankrupt where the leasehold estate sells for more than that amount.—*Becker-kord*, vol. 4, p. 203.

**15. Security on.**

A creditor whose proof of debt shows that his debt is secured by mortgage on real estate of the bankrupt, but which also shows that it is the bankrupt's homestead and is occupied by him as such, is entitled to vote upon his whole claim at the meeting of creditors for the choice of assignee.—*In re Stilwell*, vol. 7, p. 226.

**16. Land Subject to Mortgage.**

The bankrupt is entitled to the exemption of a homestead out of land mortgaged by him, to secure the payment of borrowed money, prior to the time of claiming such homestead.—*Brown*, vol. 3, p. 250.

**17. Contra, if for Purchase Money.**

The bankrupt is not entitled to the exemption of a homestead out of land mortgaged by him at the time of its purchase, to secure the payment of the purchase-money, until the said mortgage is satisfied.

The costs and expenses of the bankruptcy

proceedings are entitled to priority of payment out of funds in court derived from the sale of the property.—*In re Whitehead*, vol. 2, 599.

#### 18. Reassessment.

Where a homestead has been duly laid off and allotted under the State law, and no fraud, complicity or other irregularity is shown, the Bankrupt Court will not order a re-assessment for mere excess of value.—*In re Jack Hall*, vol. 9, p. 366.

#### 19. Selling Homestead and not Accounting for Proceeds.

A merchant, while in insolvent circumstances, selling for cash the homestead which he had previously occupied, and not accounting for proceeds of the sale, and moving into a portion of his store, is not entitled to hold the latter as a homestead exempt from his debts.—*In re Wright*, vol. 8, p. 430.

#### 20. Suspension of Rights.

Where a homestead was set apart to a family, ten days before commencement of proceedings in bankruptcy, but from which judgment an appeal was then pending, the local statute declaring that the appeal suspends but does not vacate the judgment,

*Held*, The Bankrupt Court must respect the homestead right, though suspended, and will not take possession of the property for distribution to determine the validity or propriety of such judgment, but the assignee in bankruptcy will be directed to make himself a party to the proceedings in the State court, and first determine his right to the possession of the property, in that tribunal.—*In re Mosely, Wells & Co.*, vol. 8, p. 208.

#### 21. Limited to those in Existence under State Law in 1864.

The wife of a voluntary bankrupt in Georgia sought to have set apart out of his real estate the homestead provided by the State laws of 1868, filing her petition therefor with the State officer on the same day her husband petitioned in bankruptcy, and proceedings in setting it apart concluded on the day before the husband was adjudicated a bankrupt.

*Held*, The exemptions authorized by Section 14 are limited to those established by the State laws in existence in 1864, and cannot be extended to exemptions granted by

State laws enacted subsequently. The Bankruptcy Court acquired exclusive jurisdiction of the bankrupt and his estate, on the filing of his petition in bankruptcy. The Ordinary was without jurisdiction in setting apart the homestead, and his action therein declared null and void.—*Askew*, vol. 3, p. 575.

#### 22. In Georgia, Title to, Operative only from Date Set apart.

Where a wife failed to have a homestead set apart to the family under the Act of Georgia of 1868, until after her husband was adjudged a bankrupt,

*Held*, That the wife could not have a homestead on the land of her bankrupt husband, as against the assignee of the bankrupt, or those claiming title thereto under a sale made by the assignee of the bankrupt.—*Fannie E. Lumpkin et al. v. W. Thomas Eason*, vol. 10, p. 549.

#### 23. Not Allowed unless Right Existed at Adjudication.

The debts of A were mostly contracted in 1866 and 1867, and an adjudication in bankruptcy and the assignment of a homestead was prior to the passage of the act of March 8d, 1873.

*Held*, That the rights of the parties in a proceeding in bankruptcy are fixed at date of the adjudication, and that, at the date of adjudication in this case, no homestead in land could have been allowed, as most of the debts were contracted prior to the new Constitution of South Carolina, passed in 1868, and the various acts of the Legislature, passed in accordance with the provisions of that Constitution.

*Ordered*, That the assignment of a homestead be vacated, and that the assignee, without delay, sell the lots assigned as a homestead, after giving the usual public notice.—*Kerr & Roach*, vol. 9, p. 566.

#### 24. Title to, not Affected by Bankrupt Act.

A bankrupt applied to the court in bankruptcy for an order to the assignee, requiring him to set apart certain real estate as his homestead, and for an injunction restraining a creditor who had recovered a judgment and issued an execution thereon prior to the bankruptcy, from proceeding to sell the property. The application was denied for the reasons that



if the property in question be a homestead, the title is unaffected by the Bankrupt Act. If it is not a homestead, the creditor who has a lien to its full value is the only person interested to establish the fact. If it has been wrongfully seized in execution, the bankrupt has the same rights before the State tribunals as any other person whom it is sought to deprive of a lawful homestead.—*In re Hunt*, vol. 5, p. 493.

#### 25. In Ohio only a Limited Estate.

Where a creditor objected to the exemption of homestead pursuant to the laws of Ohio, as exceeding in value the amount therein limited,

*Held*, That the bankrupt, by the allotment of the assignee, did not take a fee-simple, but only a qualified estate in the homestead, with reversion in the assignee. The homestead ordered to be sold subject to the estate of the bankrupt, all surplus in value above that estate to be paid into the general fund.—*In re Watson*, vol. 2, p. 570.

#### 26. Cannot be Claimed in Favor of Bankrupt's Vendee.

Where, prior to filing a petition in bankruptcy, the debtor has disposed of a homestead exempted to him under the State laws, and which, if in his possession, would be protected under the Act of March 3d, 1873, against liens of prior judgments, he cannot invoke the protection of the Bankrupt Act in favor of his vendee.—*Everitt*, vol. 9, p. 90.

#### 27. In Virginia, Debtor may Waive Benefit of, by Contract.

In Virginia debtor may bind himself by contract to waive the homestead exemption allowed him by the laws of that State in favor of a particular debt, and the courts will enforce and give effect to such waiver.—*In re Joseph Solomon*, vol. 10, p. 9.

#### 28. Idem. In Favor Particular Creditor.

A waiver by the bankrupt of his homestead rights in favor of a particular creditor, does not confer upon his general creditors any special rights, nor operate in their favor, and, where the assignee does not claim under the mortgages, is precisely the same as though he, the bankrupt, had never waived his homestead rights, and he is entitled to have his home-

stead set apart under the Bankrupt Act.—*Poleman*, vol. 9, p. 376.

#### HUSBAND AND WIFE.

See BANKRUPT ACT,  
EXEMPTION,  
LIEN,  
MARRIED WOMAN,  
MORTGAGES.

#### 1. Note Given by Individual Member as his Contribution to Capital

Whether a married woman may prove against the estate of a bankrupt firm, of which her husband was a member, the amount of a promissory note given by the firm to him for his contribution to capital stock—the money having been furnished by her, and the note transferred to her soon after its execution,

*Held*, The note was not an evidence of debt against the firm, but against her husband only. She may prove as against her husband and participate in the dividends of his individual estate, but not against the partnership estate.—*Frost & Westfall*, vol. 8, p. 736.

#### 2. Estoppel.

Where a married woman consents to the purchase of property with her means by her husband and in his own name, she cannot afterwards reclaim the property as against his creditors, whose debts accrued while the property was so held by him.—*Keating, Assignee, etc., v. Keefer*, vol. 5, p. 133.

#### 3. Free Trader—Husband as Agent.

Married woman did business in her own name, by her husband acting as her agent, and exercising entire control and management of the same in his discretion; she became unable to pay her debts in the ordinary course of business, as persons in trade usually do, and executed mortgages of property to secure creditors on pre-existing debts, and, thereafter, was adjudicated a bankrupt. On the question raised upon petition of the assignee to have the said mortgages set aside as invalid,

*Held*, The acts of the husband as agent of the bankrupt, his knowledge and intentions, are the acts, knowledge, and intentions of the bankrupt.—*Graham, Assignee, v. Starks*, vol. 3, p. 357.



**4. Idem.**

Mrs. Russell, a married woman, carried on, managed, and controlled an iron foundry, and other business interests in her own name, with funds loaned her by friends to whom she gave her own notes, with whom she advised as well as with her husband as to proposed investments. The husband who was insolvent, was hired by the wife, and received a monthly compensation.

*Held*, That the property used in the business, and that purchased by her and standing in her name, was her individual property, and not liable to be taken to satisfy the claims of her husband's creditors.

*Held*, That a married woman may carry on business on her own account and for her own interest; that she may employ all needed labor, workmen, and agents, and that she may employ *her own husband and pay him*.—*Russell v. Russell*, vol. 3, p. 161.

**5. Idem, Husband as Partner.**

The common law rule that a married woman could not enter into a copartnership, or make any valid contract, has been much relaxed, and the rule in equity now seems to be that she may hold, control, and dispose of her separate property, incur liabilities on the strength of it, and that it may be subjected to the payment of her debts contracted in or about the management, improvement, or purchase of such property. In Illinois, a married woman retains control of all the profits, real or personal, which she had at the time of her marriage, or acquired thereafter from any person other than her husband, and may make contracts in regard to the same which can be enforced either at law or in equity to the same extent as if she was sole. She may also engage in trade with her husband's consent, and, it seems, even without such consent, using her own property, and may bind herself by all contracts she makes in her business. When a man and his wife hold themselves out to the world as partners in trade, it will be presumed, in the absence of proof, that she contributed her share of the capital, and that her time, skill, and savings went into the business. When, in such a case, the firm becomes bankrupt, the partnership creditors are entitled to be paid in prefer-

ence to individual creditors of the husband out of the partnership assets.

Such a partnership can be adjudged bankrupt, and, it seems, the wife may also individually be adjudged bankrupt.—*In re Kinkead*, vol. 7, p. 439.

**6. Wife Claiming Homestead out of Husband's Property.**

Where a wife failed to have a homestead set apart to the family under the Act of Georgia of 1868, until after her husband was adjudged a bankrupt,

*Held*, That the wife could not have a homestead on the land of her bankrupt husband, as against the assignee of the bankrupt, or those claiming title thereto under a sale made by the assignee of the bankrupt.—*Fannie E. Lumpkin et al. v. W. Thomas Eason*, vol. 10, p. 549.

**7. Reduction to Possession by Assignee of Husband.**

In May, 1863, a *feme-sole*, being owner in her own right of a *chose* in action, marries, and a suit is instituted shortly thereafter to recover from the debtor in the name of the husband and wife. This suit continues pending until 1868, when the husband, upon his own petition, was declared a bankrupt, an assignee was appointed, and an assignment executed in the usual form. Thereafter the assignee was, upon his own motion, by order of the court, made a party-plaintiff with the wife, and a judgment was recovered in favor of the plaintiffs.

*Held*, That the assignee may proceed to enforce the payment of such judgment by execution, and receive the money when collected. If this be done in the lifetime of the husband and wife, and if collected by him, must distribute the same to creditors as the law directs. The assignee is deprived of no right, because the bankrupt has failed to schedule such *chose* in action, nor by the provisions of the Constitution of North Carolina adopted in 1868.—*In re Boyd*, vol. 5, p. 199.

**8. Separate Earnings.**

An opposing creditor to discharge of bankrupt in Illinois, charged substantially that he had covered up property to his wife's name.

*Held*, Under the State statute a married woman is, entitled to all she obtains from a source independent of her husband, but

a man in embarrassed circumstances and insolvent, cannot make use of his wife, directly or indirectly, to cover up from his creditors any of his property, or any of his earnings or his skill.—*Eldred*, vol. 3, p. 256.

#### 9. Husband Appropriating Income of Wife's Separate Estate.

Where a wife allows her husband to appropriate the *income* of her separate estate in the support of the family, this does not create such a debt on his part as is provable in bankruptcy against his estate.

*Aliter*, where the principal of her separate property is allowed to be used by the husband.—*Jones*, vol. 9, p. 556.

#### 10. Joint Security.

Security for the payment of a note, by way of a deed of trust, given on the property of the wife, by the husband and wife jointly, is security within the meaning of the Bankrupt Act, and such claim should be allowed as a secured demand, although the wife may have died leaving heirs.

The court will, on proper motion, attend to the application of the security, and to the interest of the assignees in realty.—*J. Hartel*, vol. 7, p. 559.

#### 11. Settlement on Wife.

A husband may make a settlement of property on his wife, when he is solvent, and pecuniarily in a condition to make such a gift, if it is not unreasonable in amount, and if after making it he still has abundant assets to pay those debts which he owed at that time.—*Sedgwick, Assignee, v. Place et al.*, vol. 5, p. 168.

#### 12. Idem, when Weak and Unsteady.

One who, though solvent, while weak and unsteady in his pecuniary matters, makes a settlement on his wife as an anchor in case of his failure in business, commits a fraud upon his creditors, and it will be set aside. Where a settlement is made by a bankrupt on his wife, in fraud of his creditors, this, though voidable by the assignee in bankruptcy, is not void *ab initio*. And one purchasing of the wife for value without notice, will be protected.—*Sedgwick v. Place*, vol. 10, p. 29.

#### 13. When Reconciled after Separation.

M. and his wife made an agreement of separation, whereby M. agreed to pay S., as trustee for his wife, the sum of \$7,000.

Shortly thereafter M. and his wife became reconciled, and rescinded the agreement of separation except in the matter of the separate estate.

*Held*, That all the elements of value which entered into the composition of the first agreement ceased to exist when the parties became reconciled.

The withdrawal of the consideration left the notes without any element of value in them, and the execution of the new contract, followed by cohabitation, placed the parties exactly where they would have been if there had been no separation, and the notes thus became a voluntary gift to the wife.

That, M. being largely indebted at this time, the amount given to the wife had a direct tendency to impair the rights of creditors, as it was disproportionate to the husband's means, considering his financial condition at the time, and must be taken to be in bad faith towards existing creditors.—*Keler et al. v. South et al.*, vol. 10, p. 49.

#### 14. Will.

A father, resident of Georgia, bequeathed lands therein to the husband of his daughter, in trust "for her sole and separate use, during her natural life, and the use of her children," with limitation over on her death to her then husband and children living, share and share alike, with a clause that no part of the property should be liable for the debts of any present or future husband. The wife having died and the husband become bankrupt,

*Held*, He took, under the laws of Georgia, on her death, a fourth interest in fee in the said lands.

The clause against the use of any part of the lands in payment of debts of husband, applied during the life of the wife only, and does not apply after the fee vested in the husband.—*Myrick*, vol. 3, p. 154.

#### IGNORANTIA LEGIS.

##### Cannot Avail Creditors Knowing Facts Showing Insolvency.

Ignorance of the law cannot avail creditors who are possessed of facts that show the insolvency of the debtor, and a preference received under such circumstances

is fraudulent and void.—*Martin v. Toof, Phillips & Co.*, vol. 4, p. 488.

ILLEGAL PROMISE.

**Payment of Debt to Withdraw Proceeding.**

A promise to pay a debt due by an applicant to be declared a bankrupt, in consideration that the payee will withdraw his objections in the Bankrupt Court to the discharge of the bankrupt, is illegal and void, and no action can be sustained on such promise.—*Austin v. Markham*, vol. 10, p. 548.

ILLEGIBILITY.

**Petition.**

Petition not to be filed because of illegible writing.—*Anonymous*, vol. 1, p. 815.

IMPEACHING DISCHARGE.

See DISCHARGE.

**1. Creditor May Always set up Fraudulent Concealment.**

The provision in the 34th Section of the Bankrupt Law making the certificate of a bankrupt's discharge conclusive, and allowing an application within two years in the United States District Court to annul it, does not cut off a creditor from setting up a fraudulent concealment by the bankrupt of his property against his certificate of discharge in whatever court he may plead it.—*Perkins v. Gay*, vol. 8, p. 772.

**2. Remedy by Application to District Court is Exclusive.**

In an action in a State court on a debt provable in proceedings against the defendant under the United States Bankrupt Act of 1867, C. 176, and of a nature to be barred by a valid discharge in those proceedings, the validity of a discharge granted to him therein cannot be impeached on account of a fraudulent conveyance of his property, but the remedy given by application to the District Court of the United States under Section 34, is exclusive.—*Way v. Howe*, vol. 4, p. 677.

IMPRISONED DEBTOR.

See ACT OF BANKRUPTCY,  
ARREST,  
HABEAS CORPUS.

**1. Gen. Order 27.**

Only applies to the court in which bankruptcy proceedings are pending.—*In re James W. Seymour, on habeas corpus*, vol. 1, p. 29.

**2. Fraudulent Debts.**

A bankrupt is liable to arrest by the court process of a State court for a debt fraudulently contracted, notwithstanding proceedings are pending in bankruptcy.—*Kimball*, vol. 1, p. 193.

**3. Arrested prior to Proceedings.**

A bankrupt arrested and imprisoned before the proceedings in bankruptcy have commenced, cannot be released by the court.—*William A. Walker*, vol. 1, p. 318.

**4. Fraud of Bankrupt.**

A Court of Bankruptcy has no power to discharge a judgment based upon a fraud of the bankrupt, and will not interfere to prevent imprisonment therefor, unless to enable it to exercise its proper authority and jurisdiction.—*In re Pettis*, vol. 2, p. 44.

**5. Suit for Malicious Imprisonment and Whipping.**

Where a judgment in trespass for malicious imprisonment and whipping was recovered against A, who afterwards was adjudged a bankrupt,

*Held*, That upon receiving his discharge, he must be released from imprisonment.—*In re Simpson*, vol. 2, p. 47.

**6. Costs of Action in State Court.**

A bankrupt cannot be held in the custody of the sheriff of the county on account of a judgment obtained against him for costs in an action in a State court.—*In re Borst*, vol. 2, p. 171.

INDEMNITY.

**Mortgage to Cover Acceptances.**

Where a mortgage was given to indemnify the mortgagee for his advances, and he lent his acceptances to the mortgagor, and, after the bankruptcy of the latter, bought up the paper at a discount,

*Held*, That he could charge against the mortgaged property only what he had paid in cash to take up the acceptances.—*Ex-*

*parte Ames; In re McKay & Aldus*, vol. 7, p. 230.

### INDICTMENT.

See BANKRUPT,  
FRAUD,  
MISDEMEANOR,  
PENALTY.

#### 1. Fraudulent Disposition of Goods.

An indictment where defendant is charged with disposing of certain of his goods and chattels, within three months of his bankruptcy, other than in the ordinary course of his trade, which he had obtained on credit and which remained unpaid for, defendant was sentenced to fifteen months imprisonment.—*United States v. Clark*, vol. 4, p. 59.

#### 2. Fraudulently Obtaining Goods on Credit—Pleading.

In an indictment under Section 44 of the Bankrupt Act, for fraudulently obtaining goods on credit, the proceedings in the Bankrupt Court must be pleaded and proved with such particularity as to show affirmatively that an adjudication of bankruptcy was made upon a case in which the court had jurisdiction.

The indictment, therefore, should set out the filing of the petition, the name of the petitioning creditor, the amount of his debt, the alleged act of bankruptcy, and the adjudication of the Bankrupt Court.

The description of the goods obtained must be as certain as it can reasonably be made. It should be as definite as would be required in a declaration in trover.

Offenses under Section 44 are misdemeanors, and the word "feloniously" should not be used.—*United States v. Prescott et al.*, vol. 4, p. 113.

#### 3. Idem.

An indictment which avers that the defendants conspired to obtain "dry-goods of an alleged value, under color and pretense of a purchase upon the credit of one of the conspirators, of and from such parties as could thereafter be induced by him to part with such goods under the false and fraudulent pretense thereafter to be made by him to them, that he intended to take said goods to his retail shop, specifying its location, for the purpose of selling them there to his customers by retail, in the usual

and ordinary course of retail trade," sufficiently avers that the defendant conspired to obtain the goods by means of the false pretense; it is not bad as charging a pretense of a promissory character for the future and not relating to a present fact; it describes the substance of the pretense sufficiently; and also sufficiently describes the goods to be obtained by it within the Gen. Sts., C. 161, Section 54, and St. of 1863, C. 248, Section 2.—*Commonwealth v. Andrew J. Walker et al.*, vol. 4, p. 672.

#### 4. Offense of Higher Degree.

It is no defense to an indictment that the facts in proof show that the defendant committed an offense of a higher degree than that charged.—*Commonwealth v. Walker et al.*, vol. 4, p. 672.

### INFANT

See MINOR.

### INFLUENCING PROCEEDINGS.

See ASSIGNEE,  
CONTRACTS,  
DISCHARGE,  
FRAUD,  
ILLEGAL PROMISE.

#### 1. Sufficiency of Specification.

A specification in opposition to a discharge in bankruptcy, that the bankrupt has "influenced the action" of certain creditors by a pecuniary consideration and obligation, is sufficiently distinct to be triable.—*Mawson*, vol. 1, p. 437.

#### 2. Supporting Specification.

The creditors of a bankrupt opposed his discharge on the ground that he had procured the assent of a certain creditor to his discharge by a pecuniary obligation. The evidence showed that he had paid this creditor's counsel his fee for services rendered in the matter, amounting to twenty dollars, but it was also shown that this creditor had announced that he would not oppose the discharge, before anything whatever was said about the bankrupt paying his counsel fee, and that such payment was not made a condition of his withdrawing further opposition.

*Held*, That the burden of proof was on the creditors opposing the discharge.—*Mawson*, vol. 1, p. 548.

## INJUNCTION.

See ASSIGNEE,  
CONTEMPT,  
COURTS,  
DISCHARGE,  
EQUITY,  
FRAUD,  
LIENS,  
RECEIVER,  
RENT,  
RESTRAINING  
SUITS.

**1. Proceedings in State Court.**

The United States District Court, sitting in bankruptcy, has power, by injunction, to stay proceedings in the State courts against a bankrupt.—*In re Horatio Reed*, vol. 1, p. 1.

**2. Pending Adjudication.**

Creditors petitioned to have copartnership debtors adjudged bankrupts on the ground that they had made preferential assignments, and confessed judgments to other creditors; debtors made denial, and demanded jury trials, which were ordered. Injunction had issued at the instance of one of the creditors restraining proceedings under the assignment and upon the said judgments. On motion to vacate said injunction,

*Held*, It would not be dissolved until the question of bankruptcy of the debtors should be determined.—*In re Henry F. Metzler & Thomas G. Cowperthwaite*, vol. 1, p. 38.

**3. Application for.**

Before the appointment of assignees, a petition for an injunction can be filed only by the bankrupt. After assignees are appointed, the petition should be filed by them.—*In re Thomas F. Bowie*, vol. 1, p. 628.

**4. Failure to File Bill in Equity.**

An injunction will be refused when there has been a failure to file a bill in equity, as there is in such a case nothing upon which a motion for an injunction can rest.—*Wilson v. Childs*; *Anshutz v. Campbell*; *in re Weamer*, vol. 8, p. 527.

**5. Admiralty.**

A vessel belonging to the bankrupt passed into possession of the assignee as assets, and was attached there in a suit in

rem on a claim for damages occasioned by her collision with another vessel prior to the adjudication in bankruptcy. The assignee applied for an injunction to restrain the libellants in the premises.

*Held*, That the injunction should be granted. The possession of the assignee was that of the court, and any claim or lien of the libellants against the vessel would be adjudicated by the Bankruptcy Court.—*In re People's Mail Steamship Company*, vol. 2, p. 552.

**6. Prior to Commencement of Proceedings.**

Neither the judgment nor the levy of execution divests the alleged bankrupt of his property, and he would be bound to include such estate in his inventory if adjudged a bankrupt; and further, that the Bankruptcy Court may, in the exercise of a lawful jurisdiction, restrain by injunction the sale of property under an execution issued from a State court, even before the commencement of proceedings in bankruptcy.—*In re Lady Bryan Mining Co.*, vol. 6, p. 252.

**7. Judgment in Attachment.**

After rendition of the judgment, and before the levy was completed, the debtor filed his petition in bankruptcy, and his assignee applied to the Bankrupt Court for an injunction to restrain the defendant from proceeding with his seizure and sale of the estate of the bankrupt on the execution, the attachment being within four months of the commencement of the proceedings in bankruptcy.

*Held*, That the relief prayed for should be granted, and injunction made perpetual.—*Haskell v. Ingalls*, vol. 5, p. 205.

**8. Pending Adjudication.**

The commencement of proceedings in bankruptcy transfers to the United States District Court the jurisdiction over the bankrupt, his estate, and all parties and questions connected therewith, and operates as a *supersedeas* of the process in the hands of the sheriff, and an injunction against all other proceedings than such as might thereupon be had under the authority of that court, until the question of bankruptcy shall have been disposed of.—*Jones v. Leach et al.*, vol. 1, p. 595.



**9. On Application of any Creditor.**

The Bankruptcy Court has the unquestioned power of punishing for contempt those who interfere with property of a bankrupt in its custody, and hence must have the subsidiary power of restraining persons by an injunction from interfering with such property, and then punishing them for contempt if they violate such injunction; and has a right to prevent the claimants of a lien under an attachment from proceeding against the specific property and assets attached; that it is eminently proper that the equitable power of the court should be set in motion by the petitioning creditor, or even by any creditor, either in a voluntary or an involuntary case, before the appointment of an assignee, the action of the court being for the benefit of the creditors generally; the parties might have been punished for contempt, if there had been no injunction, for interfering with the admitted property of the bankrupts, by selling it after adjudication, and there can be no well-founded objection to the power of the court to give them warning by injunction in advance, so that they may refrain from committing such contempt.

Motion to vacate the injunction order denied.—*In re Ulrich et al.*, vol. 8, p. 15.

**10. Bankrupt's Property, Seizure of.**

The property of a bankrupt, after filing his petition, is not liable to be taken on execution, and the court will prevent such interference by injunction.—*In re Wallace*, vol. 2, p. 134.

**11. Idem. What Included.**

Where a sheriff, on an execution from the State court, on the 21st of November, collected from the defendant the amount due on a *fi. fa.*, and was, eight days afterwards, by an injunction from the United States District Court, wherein proceedings were commenced on that day in bankruptcy against the debtor, enjoined from interfering with or disposing of the "bankrupt's property,"

*Held*, This injunction was a sufficient answer for the sheriff to make to an order from the plaintiff requiring him to pay over the money.

*Arguendo*, "Bankrupt's property" includes money raised on execution by the

sale thereon.—*James H. Mills v. Abraham B. Davis*, vol. 10, p. 340.

**12 Corporation.**

The bankruptcy of a corporation does not prevent judgment being obtained against the corporation, and the creditor, in default of obtaining satisfaction under the judgment, from the property of the corporation, pursuing the remedy given to him by the statute, against stockholders.—*Sarah O. Allen v. William Ward*, vol. 10, p. 285.

**13. Different District.**

A District court has no power to grant an injunction to stay proceedings in another court by reason of bankruptcy proceedings pending in another State and before another court.—*In re H. A. & J. B. Richardson*, vol. 2, p. 202.

**14. Pending Discharge.**

Judgment was obtained in a State court upon a debt provable in bankruptcy, against a debtor who appealed therefrom and thereafter petitioned and was adjudged a bankrupt. One of his sureties on the appeal becoming insolvent, judgment-creditors gave notice to bankrupt to furnish new security or abandon the appeal. Bankrupt applied for injunction to restrain judgment-creditors in the premises, which was granted. On motion to dissolve this injunction.

*Held*, It was properly granted, and would not be dissolved until bankrupt had reasonable time to obtain his discharge.—*In re Benjamin F. Metcalf & Samuel Duncan*, vol. 1, p. 201.

**15. Dissolved by Discharge.**

Where an injunction had been issued under the Act by the District Court staying proceedings against bankrupt in the State courts until the question of final discharge should be determined, and final discharge was granted and motion made to dissolve said injunction,

*Held*, That the motion was unnecessary, as the order for the final discharge terminated the injunction.—*Thomas*, vol. 3, p. 38.

**16. Jurisdiction to Issue Ceases with Discharge.**

The Bankrupt Court has jurisdiction to enjoin parties from proceeding to judgment and execution in a State court during the pendency of proceedings in bankruptcy.



The jurisdiction of the Bankrupt Court ceases with the granting of a discharge, and the plaintiff may then apply direct to the State Court for relief.—*William Penny v. A. H. Taylor*, vol. 10, p. 201.

#### 17. Dissolution of.

Where an execution-creditor, under a levy prior to proceedings in involuntary bankruptcy, has been delayed by an injunction under such proceedings, he is entitled to a summary hearing at any stage, after the execution of the assignment.

If the jurisdiction has been issued out of the Circuit Court, under the equitable jurisdiction auxiliary to that of the District Court in Bankruptcy, the execution creditor may, at his election, require the assignee as complainant to proceed in the Circuit Court in equity, or invoke the summary jurisdiction of the Court of Bankruptcy for a decision of the question of priority.—*In re Hafer & Brother*, vol. 1, p. 586.

#### 18. Examination of Bankrupt.

The Bankrupt Act does not contemplate a stay of proceedings by injunction on an order to show cause, issued out of a State court, why the bankrupt should not be punished for contempt for his failure to appear for examination on proceedings supplemental to execution.—*In re Hill*, vol. 2, p. 140.

#### 19. Foreclosure of Mortgage.

An assignee in bankruptcy petitioned the Bankruptcy Court to enjoin mortgagees from proceedings in the State court, commenced after the adjudication in bankruptcy, to have a receiver appointed, and to foreclose a mortgage on certain real property of the bankrupt in the possession of the assignee as assets; and asked that the mortgage might be declared void, the land sold free from incumbrance, and proceeds distributed.

*Held*, That the Bankruptcy Court had jurisdiction, and that the proceeding by petition was regular. The mortgagees would be enjoined as prayed, until determination of the issue of the validity of the mortgage raised by the petition.—*Kerosene Oil Co.*, vol. 2, p. 529.

#### 20. Foreign Proceedings.

*It seems* the United States District Court

has power, under some circumstances, to enjoin a citizen within its jurisdiction from holding a bankrupt under arrest in a foreign jurisdiction.—*Hasleton*, vol. 2, p. 81.

#### 21. Fraudulent Agreement.

An assignee in bankruptcy filed his petition in equity to prevent the consummation of an alleged fraudulent agreement entered into by the bankrupt and his brother-in-law the day before the filing of the petition in bankruptcy. Previous to this an action on book account had been commenced against the bankrupt by his brother-in-law. The court decided that the action was properly brought in the United States District Court, and that the agreement in question was fraudulent. Perpetual injunction granted enjoining the brother-in-law to proceed no further in a suit pending in the State court against the bankrupt.—*Samson v. Burton et al.*, vol. 5, p. 459.

#### 22. Homestead.

A bankrupt applied to the court in bankruptcy for an order to the assignee, requiring him to set apart certain real estate as his homestead, and for an injunction restraining a creditor who had recovered a judgment and issued an execution thereon prior to the bankruptcy, from proceeding to sell the property. The application was denied for the reason that if the property in question be a homestead, the title is unaffected by the bankrupt act. If it is not a homestead the creditor who has a lien to its full value, is the only person interested to establish the fact. If it has been wrongfully seized in execution, the bankrupt has the same rights before the State tribunals as any other persons whom it is sought to deprive of a lawful homestead.—*In re Hunt*, vol. 5, p. 498.

#### 23. Lien of Enjoined Creditor.

Where an execution-creditor has been enjoined from further proceeding in his execution by an injunction issued out of the Circuit Court in aid of the bankruptcy proceedings, he may, if he elect so to do, have his claim of priority of payment out of the funds (proceeds of sales of property upon which his execution is alleged to have been a lien) in the hands of the assignee, determined at a general meeting of creditors, under the 27th Section of the Bankrupt

Act, subject to exception to the District Court sitting in bankruptcy.—*In re Dunkle & Dreisbach*, vol. 7, p. 72.

#### 24. Idem.

The Bankruptcy Court has power to allow goods levied on to be sold under the execution, or to enjoin proceedings thereunder, and to order the assignee to take possession and sell the goods, with leave to the judgment-creditors to apply for an order to have their liens satisfied out of the proceeds.—*Schnepf*, vol. 1, p. 190.

#### 25. Marshal.

The United States marshal, under provisional warrant to seize the effects of the bankrupt, took goods claimed by one W., and being indemnified under G. O. No. 18, delivered the same to the assignee in bankruptcy. W. sued the marshal upon the tort in the State court. The assignee claimed the lawful possession of the property, alleged the claim of W. thereto to be illegal, and that he disposed of a portion thereof while in his possession, and prayed that W. be ordered to account therefor, and be permanently enjoined from prosecuting his action against the marshal.

*Held*, That the facts do not warrant the granting of such injunction; the marshal is responsible if he seized property not belonging to the bankrupt, and the petitioning creditors are bound to defend him in the suit by the claimant.—*In re Marks*, vol. 2, p. 575.

#### 26. Modification of.

When it is thought desirable, in order to obtain a better price for property, an injunction will be so far modified that the sale may take place under a judgment, and the referee may unite in the deed.—*Hanna*, vol. 4, p. 411.

#### 27. Obedience.

An injunction was issued out of the United States District Court for the Southern district of New York, after the adjudication in bankruptcy, and served on two attaching creditors, to restrain them from further proceedings in actions commenced in Illinois. Both of these creditors continued their proceedings after the service of the injunction, and finally sold the goods belonging to the bankrupt's estate. For an excuse, one alleged that his claim had been assigned, and therefore he did not

trouble himself to see that the injunction was obeyed, and the other, that, when the injunction was served on him, he sent it to the department in which it belonged, to the clerk having charge of such matters, supposing it would be obeyed.

*Held*, That the injunction had been violated by both creditors; that there was no legal evidence before the court of any assignment; that it was the duty of a partner served with an injunction to notify his partner living at a distance immediately, and give instructions to stop proceedings; and that mere inaction is not proper obedience to the mandate of the court.—*Hyde, Assignee, etc., v. Bancroft & Steiner*, vol. 8, p. 24.

#### 28. Idem.

C., an attorney, was served with an injunction forbidding him to make a motion in a State court. Service was perfected while in the act of addressing the court. He stated the fact, and then handed up his papers and subsequently entered an order allowed by the State court thereon.

*Held*, Guilty of contempt, and a reference ordered to report the amount of cost and expenses occasioned thereby.—*In re S. S. Railroad Co.*, vol. 10, p. 274.

#### 29. Party to Proceedings.

There is no party to a creditor's petition except the petitioning creditor and the bankrupt; the service of an injunction on any person or any number of persons, does not make them parties to the proceedings, although any one served might, by petition or on motion, have a wrongful injunction dissolved; this, however, does not give him the right to contest or vacate an adjudication, that being a matter in which he can have no interest.—*Karr v. Whittaker et al.*, vol. 5, p. 123.

#### 30. Preventing Preferences.

In a case of involuntary bankruptcy, in which the debtor, being insolvent, or having insolvency in contemplation, and intending to give a preference, or to defeat, or delay, the operation of the Bankrupt Law, has, within six months before the commencement of the proceedings in bankruptcy, given to a creditor who had reasonable cause to believe that a fraud on this law was intended, or that the debtor was insolvent, a warrant as attorney, under which

judgment has been confessed in a State court, and an execution has been levied upon his stock in trade, which has not as yet been sold under it, the present Bankrupt Law gives to the court of the United States, for the proper judicial district, jurisdiction to prohibit such creditor, by injunction, from proceeding further under such execution.—*Irving v. Hughes*, vol. 2, p. 61.

### 31. Provisional.

The authority conferred by the 40th Section, to issue an injunction against the bankrupt and all other persons, has no reference to the State courts, and it is a limitation of the sweeping provisions of the 1st Section.—*In re Hugh Campbell*, vol. 1, p. 165.

### 32. Idem—Simultaneously with Order to Show Cause.

Section 40 of the Bankrupt Act refers to such injunctions as were granted simultaneously with the order to show cause, and is not applicable to such as might be granted between the time of the commencement of proceedings and up to the date of adjudication, or even up to the appointment of an assignee.

Motion to dissolve the injunction denied.—*In re I. I. Fendley*, vol. 10, p. 251.

### 33. Idem—Without Notice.

Injunctions in bankruptcy, under Section 40 of the Act, may be allowed and issued without notice, but the court may require notice to be given.—*Muller & Brentano*, vol. 3, p. 329.

### 34. Terminates on Adjudication.

An injunction granted under Section 40 of the Bankrupt Act does not extend beyond the adjudication. Hence any proceedings to punish parties for contempt in violating an injunction after adjudication, must be dismissed with costs.—*In re Moses*, vol. 6, p. 181.

### 35. Receiver.

Where a corporation was dissolved by a decree of a State court, and a receiver appointed before adjudication, but after the service of an order to show cause, an injunction was granted restraining the State court receiver from disposing or interfering with the property of the corporation, and from setting up and asserting as

against the assignee in bankruptcy, any title to or right of action for any of said property, and enjoins, pending this action, and by final decree, from doing any acts to carry out or effectuate the trusts purporting to be created by his appointment as receiver.—*Platt, Assignee, v. Archer*, vol. 6, p. 468.

### 36. Rent.

An application was made for an injunction to restrain certain parties from collecting rents from real estate in which the bankrupts have any legal or equitable interest.

*Held*, That an injunction should be granted and a receiver appointed.—*Keenan v. Shannon et al.*, vol. 9, p. 441.

### 37. State Courts.

Congress, by the Constitution of the United States, had the right to bring all parties estates and interests connected with a bankrupt into the District Court of the United States, as a Court of Bankruptcy, and to confer upon the District Courts the authority to suspend all and every proceeding elsewhere, and to command obedience to their mandates, exclusive of all other jurisdictions. But, by the Bankrupt Act of the 2d March, 1867, they have not done so. This act does not authorize the District Courts of the United States to issue injunctions to State courts, nor to the actors or parties litigating before them.—*In re Hugh Campbell*, vol. 1, p. 165.

### 38. Idem.

The principle decided in Campbell's case, that the District Courts of the United States have no power to issue injunctions to State courts, affirmed.—*In re S. & M. Burns, ex-parte, William Burns*, vol. 1, p. 174.

### 39. Idem—Doubted.

Whether the Bankruptcy Act confers upon the District Court sitting in bankruptcy the power to issue an injunction to stay proceedings in State courts, *quære*.—*In re Hirsch*, vol. 2, p. 3.

### 40. Contra—In Fraudulent Assignments.

An injunction may be issued out of the United States District Court, sitting in bankruptcy, to restrain certain creditors of the bankrupt from all further proceedings

in a State court, and from intermeddling or interfering with the bankrupt's property, which had been fraudulently assigned, before the commencement of proceedings in bankruptcy, to an assignee of his own selection.—*John Sedgwick, Assignee of Andrew Beiser, v. William Menck & Charles B. Bostwick*, vol. 1, p. 425.

#### 41. Strangers to the Proceedings.

When a petition for an injunction against other parties than the debtor is united with a petition in involuntary bankruptcy, the injunction will be only provisional, until the court can act upon the petition to adjudge the debtor a bankrupt, and a bill must then be filed to secure the relief sought against parties other than the bankrupt.—*Kintzing*, vol. 8, p. 217.

### INSANITY.

See ACT OF BANKRUPTCY,  
ADJUDICATION.

#### 1. At Commencement of Suit.

Where assignees apply to court for an order to examine a lien-creditor who had obtained judgment against a bankrupt alleging bankrupt's insanity, at the time the process was served, and at the date of the judgment obtained against him,

*Held*, In view of the alleged insanity of the bankrupt, a writ, *coram nobis*, in the court where the judgment was rendered would be the proper mode of redress; the jurisdiction of this court will then attach to the whole subject.—*McKinsey & Brown, etc., v. Harding*, vol. 4, p. 39.

#### 2. Committing Act of Bankruptcy.

A person cannot commit an act of bankruptcy while insane; but, if when sane he has committed such an act, he may be made bankrupt upon a petition *in invitum* after he has become insane.—*In re D. Pratt*, vol. 6, p. 276.

#### 3. At Commencement of Proceedings.

Where it appears that the bankrupt was insane at the time of the service upon him of the order to show cause, the court will set the adjudication aside on the application of the bankrupt after the property has been turned over to the assignee, if at the time of the application the bankrupt is of sound mind, and allow him to show cause

why he should not be adjudged a bankrupt.—*In re Alonzo Murphy*, vol. 10, p. 48.

### INSOLVENCY.

See ACT OF BANKRUPTCY,  
ADJUDICATION,  
ASSIGNMENT,  
COMMERCIAL PAPER,  
EQUITY,  
FRAUD,  
INJUNCTION,  
SUSPENSION OF PAYMENT.

#### 1. Inability to Pay Punctually.

Insolvency, as used in the 39th Section of the Bankrupt Act of 1867, means a simple inability to pay, as debts become payable.—*In re James Black & William Secor*, vol. 1, p. 353.

#### 2. Must be Averred and Shown.

An insolvent debtor commits an act of bankruptcy by confessing judgment and allowing his property to be taken on the execution, with intent to prefer a creditor. But his insolvency or contemplation of insolvency must be averred and shown.—*Craft*, vol. 1, p. 378.

#### 3. Debts as they Mature.

A trader is in insolvent circumstances when he is not in a condition to pay his debts in the ordinary course of business, as persons carrying on trade usually do.—*In re Gay*, vol. 2, p. 358.

#### 4. Idem.

Merchants not able to pay off their debts in the usual and ordinary course of business, as persons carrying on trade usually do, are insolvent within the meaning of the Bankrupt Act of 1867.—*In re Louis & Rosenham*, vol. 2, p. 449.

#### 5. Idem.

A merchant or trader who cannot pay his debts, in the ordinary course of his business, is insolvent.—*Wilson, Assignee, v. Brinkman et al.*, vol. 2, p. 468.

#### 6. Present Inability.

Insolvency is a present inability to pay debts when due, even when there is surplus property more than enough to pay them at some future time.—*Morgan, Root & Co. v. Erman E. Mastick*, vol. 2, p. 521.

#### 7. All Available Means to Pay one Debt.

It is not in the ordinary course of busi-

ness to take all available means to pay one debt, leaving insufficient assets to meet the other debts as they become due.—*In re Dibble et al.*, vol. 2, p. 617.

**8. When Debts cannot be Made in Full out of Property by Levy.**

If a man's debts cannot be made in full out of his property by levy and sale on execution, he is insolvent within the primary and ordinary meaning of the word, and particularly in the sense in which the word is used in the Bankrupt Act.—*Randall & Sunderland*, vol. 3, p. 18.

**9. Idem, and Punctual Payment.**

A merchant is insolvent when he cannot pay his debts in full *as they become due*, and out of whose property they cannot be collected by legal process. — *Randall & Sunderland*, vol. 3, p. 23.

**10. Idem, Prima Facie Evidence of.**

A trader unable to pay his debts in the ordinary course of business is *prima facie* insolvent, and the burden of proof is upon him, in such a case, to show that he is insolvent.

*Aliter*, As to a farmer, when the petitioner must prove the actual insolvency of the alleged bankrupt.—*Miller v. Keys*, vol. 3, p. 225.

**11. Idem.**

When a man's property is taken on legal process against him, that if all his property were sold, and would not produce money enough to pay his debts, he is insolvent within the meaning of the law.

A solvent man is one that is able to pay all his debts in full as they become due.—*Wells*, vol. 3, p. 371.

**12. Convertible Assets.**

The word "insolvency," as used in the present Bankrupt Act, must be construed to mean, not an absolute inability to pay debts at some future time, upon the settlement and winding up of the party's affairs, but a present inability to pay, as the debts mature in the ordinary course of business, although this inability be not so great as to compel an absolute suspension.—*Rison, etc.*, v. *Knapp*, vol. 4, p. 349.

**13. Extension by Creditors.**

The proposition is untenable that a debtor ceases to be insolvent because, being unable to pay his debts as they mature,

creditors have agreed to extend the time of payment.—*Rison, etc.*, v. *Knapp*, vol. 4, p. 349.

**14. In Usual Course of Business.**

A person is held to be insolvent when he is unable to discharge his debts in the usual course of business of persons engaged in the same trade or occupation.—*Stranahan, Assignee of Bannister*, v. *Gregory & Co.*, vol. 4, p. 427.

**15. Idem.**

The inability to pay debts in the ordinary course of business, as merchants in trade usually pay them, constitutes insolvency within the meaning of the Bankrupt Act.

Where a party cannot pay his debts in the ordinary course of business, and knows that he cannot, he will be held to have had knowledge of his insolvency.—*Martin v. Toof, Phillips & Co.*, vol. 4, p. 488.

**16. In Agricultural Country.**

In a mercantile community the non-payment of a note at maturity by the maker, who is a merchant or trader, is *prima facie* evidence of insolvency, and warrants a decree in bankruptcy. In an agricultural country the rule is different, and there no man is suspected of being insolvent from the fact alone that his notes are not paid promptly at maturity.—*Shaffer v. Fritchery & Thomas*, vol. 4, p. 548.

**17. Paying Large Discounts.**

The simple fact that a man doing a large business pays, under special circumstances, a large discount for a loan, is not notice of insolvency to the creditors, it being shown that at the time similar commercial paper was selling at high rates.—*Golson et al. v. Neihoff et al.*, vol. 5, p. 56.

**18. According to Usage of Place of Business.**

The strict definition of insolvency usually given in commercial centers, should not be applied in country places. A party should be held insolvent only when he fails to meet his debts according to the usages and customs of the place of his business; the rule should be in harmony with the general custom of the place.—*Hall & Wager v. Fales*, vol. 5, p. 182.



**19. Suffering Judgment on a Just Debt.**

A mercantile firm having no property but their stock in trade, are insolvent within any accepted or sound definition of that term as used in the Bankrupt Act now in force, who, when pressed for a debt admitted to be just, give as a reason that they are unable to pay it, and suffer judgment to be rendered against them.—*Wilson v. City Bank of St. Paul*, vol. 5, p. 270.

**20. Not merely, when Debts Exceed Assets.**

A trader is insolvent within the meaning of the 35th Section of the present Bankrupt Act when he is unable to pay his debts as they mature in the ordinary course of his business, and not merely when his liabilities exceed his assets.—*Sawyer et al. v. Turpin et al.*, vol. 5, p. 339.

**21. Merchants and Traders.**

By insolvency, as used in the Bankrupt Act, when applied to traders and merchants, is meant inability of a party to pay his debts as they become due in the ordinary course of business.—*Toof et al. v. Martin*, vol. 6, p. 49.

**22. Knowledge of Creditor's Attorney.**

*Semble*, Knowledge of a debtor's insolvency is not necessarily to be presumed of the creditors because of such knowledge by their attorney.—*In re J. B. Wright*, vol. 2, p. 490.

**23. Reasonable Cause to Believe.**

A creditor has reasonable cause to believe a debtor, who is a trader, to be insolvent when such a state of facts is brought to the creditor's notice respecting the affairs and pecuniary condition of the debtor as would lead a prudent business man to the conclusion that he is unable to meet his obligations as they mature in the ordinary course of business.—*Toof et al. v. Martin*, vol. 6, p. 49.

**24. Assets Exceeding Liabilities.**

Although the assets of a debtor may be rightly estimated at four times the amount of his debts, yet he is insolvent if unable to meet his engagements as they accrue and become due.—*In re Woods*, vol. 7, p. 126.

**25. Corporation.**

A corporation that is unable to pay its

debts as they become due, in the ordinary course of its daily transactions, is insolvent.—*Buchanan et al. v. Smith*, vol. 7, p. 513.

## INSOLVENT LAWS.

See ASSIGNMENT,  
CORPORATION,  
COURTS,  
SAVING BANKS,  
TIME.

**1. In May, 1867.**

A debtor made an assignment under the insolvent law of Ohio, on May 25, 1867, and under it, a State court took cognizance of the matter. On July 17th, a petition in bankruptcy was filed by a creditor.

*Held*, That as to this matter the Bankrupt Act of 1867 was in force on May 25th, and the United States court could rightfully take jurisdiction of the whole matter under the petition filed in July.—*William H. Langley*, vol. 1, p. 559.

**2. Contra.**

Judgment was rendered against the debtor in a California State court, January, 1866, from payment whereof he claimed to be discharged by virtue of proceedings under the insolvent laws of said State, commenced May 1, 1867, and terminated by final decree on July 1, 1867. On appeal from the decision of the court below denying the motion to quash execution upon such judgment,

*Held*, That the Bankruptcy Act, so far as it operated to supersede the State insolvent laws, did not take effect until June 1, 1867.

The State Insolvent Court acquired rightful jurisdiction of the case on the issue, May 1, 1867, of the order under the State laws staying proceedings of creditors, prior to the operation of the Bankruptcy Act, and its proceedings are valid, and unaffected by that statute.

*Semble*, The State insolvent laws were superseded by the Bankruptcy Act, June 1, 1867, and all proceedings thereafter commenced under said Act are null and void.—*Martin v. Berry*, vol. 2, p. 629.

**3. Idem.**

The insolvent laws of the commonwealth of Massachusetts, were not superseded until June 1, 1867, by the United States Bankrupt Law, approved by the President



March 2, 1867, U. S. St., 1867, C. 176.—*Day v. Bardwell et al.*, vol. 3, p. 455.

#### 4. Suspended by Bankrupt Act.

All State insolvent laws are repealed by the exercise by Congress of the constitutional power vested in it to establish a uniform system of bankruptcy.—*Meekins, Kelly & Co. v. Their Creditors*, vol. 3, p. 511.

#### 5. Idem.

The passage of the Bankrupt Law suspends the State insolvent laws in force at the time of its passage, in so far as the provisions of the Bankrupt Law cover the subject-matter of the State laws.—*Reynolds*, vol. 9, p. 50.

#### 6. Idem.

The Act of Congress passed March 2, 1867, supersedes the State insolvent laws, even where the plaintiff and defendant are both citizens of the same State; hence, a discharge under the insolvent laws of a State is no defense to an action brought to recover an amount stated to be due on open account.—*Cassard et al. v. Kroner*, vol. 4, p. 569.

### INSURANCE.

See ASSETS,  
CONTINGENT DEBTS,  
PRACTICE,  
PROVABLE DEBT.

#### 1. Transfer by Operation of Law does not Avoid.

W., on petition of his creditors, was adjudged a bankrupt, being, at the time of the adjudication, the owner of a dwelling-house covered by a policy of insurance containing the following clauses: "If the title of the property is transferred or changed," or, "the policy is assigned, this policy shall be void." The building was destroyed by fire after the transfer by the Register to the assignee. The transfer being by operation of law, did not void the policy.—*Starkweather v. Cleveland Ins. Co.*, vol. 4, p. 341.

#### 2. Contra.

An adjudication of bankruptcy terminates the interest of the bankrupt in any policy of insurance, and the policy is thenceforth void and of no effect; but an insurance company may consent to con-

tinue their liability by the usual transfer of the policy to the Register in charge of the bankruptcy proceedings, until an assignee shall have been appointed, and may also transfer said policy to the assignee when appointed. It is optional with the company to continue the risk by such transfers, or to cancel the same.—*Carou*, vol. 4, p. 543.

#### 3. Covenant to Insure.

A creditor who has his debt secured by a valid trust deed containing a covenant to insure the buildings erected on the property to their full insurable value, has a clear and specific lien upon the proceeds of the insurance, to the exclusion of the general creditors in case of a loss by fire. The fact that the policies were not regularly assigned makes no difference, as in equity the assignment is executed the moment the insurance is effected; nor is the case altered on account of a clause in the said deed allowing the insurance company to be selected by the party loaning the money.—*Sands Ale Brewing Company*, vol. 6, p. 101.

#### 4. Policy on Life of Wife Payable to Husband.

Where a wife, possessed of a separate estate, procured a policy of insurance upon her life, payable upon her death to her husband, and paid the premiums out of her own estate for a year, before the end of which he was adjudicated a bankrupt, and where she paid out of her own estate the premiums for the two following years, and before the fourth premium became due she died,

*Held*, That the husband, as against the assignee in bankruptcy, was entitled to the proceeds of the policy.—*In re Owen & Murrin*, vol. 8, p. 6.

#### 5. Proof of Loss as Required by Policy.

Where an insurance company became bankrupt, and a creditor filed proof of his claim in the ordinary form in bankruptcy,

*Held*, He must also comply with the clause of policy requiring proof of loss to be furnished in a particular manner.—*In re Firemen's Ins. Co.*, vol. 8, p. 123.

#### 6. Waiver of Formal Defects.

Where an insurance company fails to object to a matter of form in the proof of

a loss until it is too late to remedy it, it will be estopped from setting up this defect.—*In re Republic Insurance Co.*, vol. 8, p. 197.

**7. Creditor cannot Recover his Debt in full, and also Receive Dividend.**

A creditor, after the bankruptcy of his debtor, takes out an insurance on the life of his debtor as security for the debt due him, and pays all the premiums out of his (the creditor's) own money. He also proves his debt in bankruptcy and receives dividends thereon. The bankrupt dies prior to the declaration of the last dividend, and the insurance company pays the creditor in full the original amount of the debt.

*Held*, The creditor must pay to the assignee in bankruptcy the whole amount received from the insurance company over the amount sufficient, with the dividends and payments previously made, to pay the debt in full, but he was entitled to deduct also the amount of premiums paid by him, with interest from the time of payment.—*Newland*, vol. 9, p. 62.

**8. Unearned Premiums.**

Where the policies in an insurance company are terminated, the insured do not become creditors of the company for the unearned premium, so that payment to them of such premiums constituted such a preference as will support a petition for an adjudication of bankruptcy.—*Knickerbocker Insurance Co. v. Comstock*, vol. 9, p. 486.

**INTENT.**

See ACT OF BANKRUPTCY,  
EVIDENCE,  
FRAUD,  
PREFERENCE.

**1. Omission of Debtor to Apply for Adjudication.**

The property of a debtor being attached by a hostile creditor, without his knowledge, and he omitted to have himself adjudged a voluntary bankrupt,

*Held*, That the omission had no retrospective interest on the previous taking of the property, and could not "supply the intent to give a preference.—*Belden*, vol. 2, p. 42.

**2. Must be Proved as a Fact.**

The *intent* to prefer is to be proven as a fact, either by direct evidence, or as the necessary and certain consequence of other facts clearly proved.—*Morgan, Root & Co. v. Erman E. Mastick*, vol. 2, p. 521.

**3. Knowledge of Insolvency.**

The *intent* to prefer constitutes the offense, not morally fraudulent, but merely made so by the Act of Congress.

If a debtor honestly believes himself solvent and pays a just debt, such payment cannot be considered fraudulent, though bankruptcy ensue; otherwise, if he is aware of his insolvency.—*Morgan, Root & Co. v. Mastick*, vol. 2, p. 521.

**4. General Assignment.**

Where a creditor is about to recover a judgment, and the debtor makes a general assignment of all his property for the benefit of his creditors, before the judgment is rendered, this is not a conveyance with intent to delay, defraud, or hinder creditors. The innocence or guilt of the act depends on the mind of him who did it, and it is not a fraud unless it was meant to be so.—*Langley v. Perry*, vol. 2, p. 596.

**5. Immateriality of the Terms of an Assignment.**

Where the forbidden intent and purpose exist in making an assignment, it is immaterial what are its terms, or how much or little of the assignee's property it conveys.—*In re Abraham Goldschmidt*, vol. 3, p. 165.

**6. Ignorant of the Law.**

A creditor, ignorant of his legal rights, will not be held, in the absence of proof of fraud, to intend what his acts imply, particularly if such creditor be acting in a fiduciary capacity.—*Brand*, vol. 3, p. 324.

**7. Necessary Consequence of Acts.**

Debtor in answer to petition against him in involuntary bankruptcy, denied having committed an act of bankruptcy, and denied that he knew or believed himself insolvent when he executed the said mortgages, though he made admissions in such answer that showed that he was legally insolvent and that he knew the facts upon which the law adjudged him insolvent.

*Held*, Such debtor is conclusively presumed to have intended the necessary effects

of such general assignment, which would be to defeat provisions of the Bankruptcy Act. In making such general assignment he therefore committed an act of bankruptcy.—*Smith*, vol. 3, p. 378.

**8. Idem.**

That it is to no purpose that a man says, when he is insolvent and signs a note and warrant of attorney and gives it to his creditor, the effect of which is to enable that creditor to enter up judgment and levy on his property, that he did not intend to give a preference.—*Campbell, Assignee, v. Traders' National Bank*, vol. 3, p. 498.

**9. Character of Instrument Determines its Intention.**

It is *the character of the instrument* which is the subject of discussion; and if the exercise of the powers granted by it would defeat or delay the operation of the Bankrupt Act, then such would be presumed to have been its intention.—*Chamberlain*, vol. 3, p. 710.

**10. Effort to Compromise.**

Where there is no fraudulent intention a dealer may, although insolvent, continue to sell his stock at retail, and endeavor to effect, if possible, a compromise with his creditors.—*Munger & Chapman*, vol. 4, p. 295.

**11. Payment while Insolvent.**

Although insolvency exists, yet, if the debtor honestly believes he shall be able to go on in his business, and with such a belief pays a just debt without a design to give a preference, such payment is not fraudulent, although bankruptcy should subsequently ensue.—*Gregg*, vol. 4, p. 456.

**12. Future Good Intentions.**

That E. and F., having taken preferences contrary to the Bankrupt Law, cannot be allowed to prove their debts in bankruptcy. That it is immaterial what use these creditors may have ultimately intended to make of their preference, as the law does not trust the legal rights of one portion of the creditors to the judgment or good intentions of the others.—*Walton & Walton*, vol. 4, p. 467.

**13. Effect of Acts.**

The necessary effect of a conveyance to creditors in satisfaction either in whole or in part of a pre-existing debt, by one who

knows that he is insolvent, is a preference in fraud of the Bankrupt Act, and he must be held to have intended this as a necessary result of his action.—*Martin, etc., v. Toof et al.*, vol. 4, p. 488.

**14. Preferring Individual to Corporation Creditors.**

An intent to give a preference to individual creditors over persons who might charge the debtor with liability for the debts of a corporation, is not such a fraudulent preference as can be impeached under the Bankrupt Law, as an intent to defraud creditors.—*Cookingham, Assignee, v. Ferguson & Ferguson*, vol. 4, p. 636.

**15. May be Shown by Circumstances.**

Creditors who receive an illegal preference are liable to the assignee of the bankrupt; and the intent of the debtor to give, and of the creditor to secure an unauthorized preference, may be shown by circumstances.—*Giddings, Assignee, v. Dodd, Brown & Co.*, vol. 4, p. 657.

**16. Not Justify Action Contrary to Act.**

The Bankrupt Law has provided the best mode of administering the estate of an insolvent, and will tolerate no attempt by individuals to devise and carry into effect some other plan inconsistent therewith, nor justify such an attempt by the excuse that they thought such plan wiser or better.—*Cookingham et al., Assignees, v. Morgan et al.*, vol. 5, p. 16.

**17. Reasonable Cause.**

Where an execution must necessarily stop the debtor's business, the execution creditor, as a rule, has reason to believe the debtor insolvent, and in general intends what, if not prevented, would be a fraud on the provisions of the Bankrupt Law.—*Hood et al. v. Karper et al.*, vol. 5, p. 358.

**18. Sale of Goods.**

Where the intent of the bankrupt, in making sale of his goods, was to carry on his business to pay his maturing obligations, such sale cannot be set aside, even though made, to one knowing of his insolvency, at a price below cost.

The *fraudulent intent* on the part of the seller is in every case an essential requisite to establish the invalidity of a transfer of property.—*Sedgwick, Assignee, v. Lynch*, vol. 8, p. 289.

**19. Knowledge of Insolvency.**

It is sufficient proof that the creditor had reasonable cause to believe that the debtor intended to prefer him, to show that at the time of receiving the preference he had reasonable cause to believe the debtor insolvent, and that the debtor knew of his insolvency.—*Stobaugh v. Mills et al.*, vol. 8, p. 361.

**20. Preference.**

A transfer of property which necessarily gives a preference to one creditor over another, is presumed to have been made with a view to such preference, and in fraud of the provisions of the Bankrupt Act.—*Catlin, Assignee, v. Hoffman*, vol. 9, p. 342.

**INTEREST.**

See DEBTS,  
PARTNERSHIP,  
PROOF OF DEBT.

**1. Proof of.**

Interest may be proved on debts due and payable at the date of admission of adjudication in bankruptcy under Section 19, as an account current.—*Freeman Orne*, vol. 1, p. 57.

**2. Annual Rests.**

A stipulation in a judgment that the interest on it shall bear interest if not paid annually is void, and does not make such judgment usurious.—*In re Fuller*, vol. 4, p. 116.

**3. Suspended by Civil War.**

Interest should not be allowed for the period during which intercourse between the parties, and between parts of the country in which they respectively lived, was suspended by our late civil war.—*Bigler v. Walker*, vol. 4, p. 291.

**4. Recovery of Excess Paid.**

When the charter of a bank prohibited it from taking a greater than a specified rate of interest, but was silent as to the effect or penalty if more than the charter rate be taken, it was held that if an illegal rate be contracted for, the effect was not to render the whole note void, but only the excess beyond the legal rate, and that, at all events, if such a note be voluntarily paid, neither the borrower nor his assignee in bankruptcy can recover back the principal sum, or anything more than the excess beyond the legal rate of interest.

Equity will entertain a bill to recover such excess; the remedy is not exclusively at law.—*Durby's Trustees v. Boutman's Saving Institution*, vol. 4, p. 601.

**5. Not computed after Adjudication Except on Secured Debts.**

Interest on provable debts cannot be computed as against the general assets of the bankrupt's estate, beyond the date of the adjudication. A secured creditor may, however, apply the proceeds of his security to the satisfaction of his debt, principal and interest, up to the time of payment, when so stipulated in his contract.—*In re Haake*, vol. 7, p. 61.

**6. In Case of Surplus.**

Where there is a surplus in the hands of the assignee after paying the creditors of a bankrupt, it should be applied to the payment of interest, to be computed from the date of the adjudication.—*In re Richard, Mary, and S. B. Town*, vol. 8, p. 40.

**7. In Oregon, Annuls Contract.**

Section 2 of the Interest Act of Oregon (Oregon Code, 755) provides that, "no person shall receive any greater sum or value for the loan or use of money," than in such act prescribed.

*Held*, That it is not necessary that this "greater sum or value" should be contracted for or received at the time of making the loan, to bring the transaction within the prohibition, but if it is received at any time for or on account of such loan or use of money, it is within such prohibition, and the whole contract or transaction becomes illegal and void.—*In re Robert Pittock*, vol. 8, p. 78.

**8. Rebate, How Calculated.**

In calculating the amount of rebate of interest the same per centum is to be allowed as was originally given.—*In re Riggs, Lechtenberg & Co.*, vol. 8, p. 90.

**9. Marshal not Entitled to on Fees.**

A marshal is not entitled to charge interest upon fees earned, but when his expenditure exceeds the amount of money paid to him in advance, on account of costs, justice requires that he should be compensated by allowing the usual rate of interest on the excess.—*In re Donahue & Page*, vol. 8, p. 458.

**10. Creditor Receiving Preference Liable for Interest on Value.**

Where a creditor receives property in violation of the Bankrupt Law, as a preference, he will be liable to account for the value of the property, with interest from the time of transfer.—*Smith v. Clark*, vol. 10, p. 260.

**11. On Bank Bills in Case of Surplus.**

The creditor of a bank in bankruptcy, whose estate has paid all the debts proven against it in full, leaving a surplus in the hands of the assignee, and the evidences of debt filed with the proofs being the bills or notes of the bank, issued as money, is entitled only to interest on such notes in proof, from the date of the proof and filing of the bills before the Register.

To entitle the holder of bank bills to interest thereon, presentation, demand, and refusal, are prerequisite, and neither the suspension of payment nor the commencement of proceedings in bankruptcy, of themselves operate to change a circulating medium into an interest-bearing obligation. *In re the Bank of North Carolina*, vol. 10, p. 289.

**12. Idem, Ordinary Claims.**

There is nothing in the Bankrupt Law to prohibit the payment of interest on claims proven against the bankrupt's estate from the day of filing the petition, when there are sufficient funds in the hands of the assignee to do so.—*In re Edward Hagan*, vol. 10, p. 383.

**13. National Bank—Defense of Usury.**

The effect of the Act of the Legislature of New York, C. 172, of 1850, p. 334, which forbids corporations from interposing the defense of usury, is to constitute the State of New York a State in which no rate of interest is fixed by law as against corporation borrowers, within the meaning of the Federal Banking and Currency Act (13 Statutes at Large, Section 30, p. 108).

A national bank, located and doing business in the State of New York, is therefore, in respect to its dealings with corporation borrowers, permitted only to take interest at the rate of seven per cent. per annum; and the corporation borrower and its sureties may, in a State where no rate is fixed by law, interpose the defense of usury under the Federal Statute, and avail

itself of the forfeitures and penalties prescribed by the latter. — *Receiver of Ocean National Bank v. Estate of Wild*, vol. 10, p. 568.

## INTERPRETATION.

See CONTRACTS.

**1. Manifested Intention to Govern.**

A court cannot substitute in the place of an expressed intention embodied in a statute a presumed intention, but must administer the intention of Congress as such intention is made manifest by the words of the statute in the Bankrupt Act itself. — *In re Nounnan & Co.*, vol. 7, p. 15.

**2. Adopting Statute of a State.**

The rule that a legislature, by adopting a statute of another State, or re-enacting an old statute, is presumed to have adopted the judicial construction given thereto, considered and authorities referred to.—*Goodall v. Tuttle*, vol. 7, p. 193.

**3. Statute Containing Prohibition and Penalty.**

Where a statute contains both a prohibition and a penalty, a contract or transaction contrary thereto is absolutely illegal and void, unless it appears upon a consideration of the whole act that the legislature did not so intend.—*In re Pittock*, vol. 8, p. 78.

**4. Amendment of Constitution of United States.**

The rule that statutes should not receive an interpretation that will give them a retrospective operation, so as to divest vested rights of property, and perfect rights of action, has no application, so far as relates to slaves and slave contracts, in the construction of the Thirteen Articles of Amendment of the Constitution of the United States.—*Buckner v. Street*, vol. 7, p. 255.

## INTERVENTION.

See CREDITOR,

DISCONTINUANCE OF  
PROCEEDING.

**1. Failure to Proceed.**

Where the parties appear and join issue and no further proceedings or adjournment is had, the matter is to be considered as pending from day to day until disposed of; hence any other creditor may



come in under Section 42 of said Act upon any such subsequent day, and may prosecute the original petition upon satisfying the court that the original creditor does not intend to prosecute the matter further. A failure to *proceed* confers upon another creditor the right to intervene equally with a failure to *appear*.

The pending of a petition for leave to discontinue the proceedings does not deprive any outside creditor of the right to intervene, but a notice to him and all other creditors, that the original petitioning creditor does not intend to proceed further in the matter.—*William Buchanan*, vol. 10, p. 97.

## 2. Prior to Entry Order of Discontinuance.

A right to have a case discontinued does not *per se* operate as a discontinuance, or divest the court of jurisdiction.

The construction of Section 42 of the Bankrupt Act contemplates that the petitioning creditor, abandoning the proceeding, may not appear, or may not proceed with the prosecution, and in either event any other creditor may intervene, and on his application the court may proceed to an adjudication. This right of intervention it is not in the power of the petitioning creditor or of the bankrupt to cut off or defeat by any arrangement between themselves, and any action of the court which prevents or defeats such right of intervention is erroneous and in violation of the statute.

If, in the taking of proofs or for the trial by jury, or for the requisite consideration of the court, postponement becomes necessary, the proceeding is, nevertheless, a proceeding as of the return day, and for all purposes affecting the right of other creditors to intervene should be so regarded.

The words "such petition" in the 42d Section of the said Act, refer to the prior part of that Section and also to the two preceding Sections, and mean the petition of the original petitioning creditor and not the petition of the creditor who seeks to intervene.—*Lacey, Downs & Co.*, vol. 10, p. 478.

## 3. Opposition to Discharge.

If a creditor who had duly filed specifications of opposition to the bankrupt's discharge fails to pursue his opposition, other creditors may be permitted to intervene

and carry on the opposition.—*In re S. S. Houghton*, vol. 10, p. 387.

## INVENTORY.

See AMENDMENT,  
BANKRUPT,  
SCHEDULES.

### 1. Certificate of Register.

The certificate of the Register to the sufficiency of the inventory of the debtor's debts is not so conclusive as to prevent inquiry when the question is raised by a proper party, at the proper time, and in the proper manner.—*Hill*, vol. 1, p. 16.

### 2. To include Property Levied on.

Neither judgment nor levy of execution divests the alleged bankrupt of his property, and he would be bound to include such estate in his inventory if adjudged a bankrupt.—*Lady Bryan Mining Co.*, vol. 6, p. 252.

## INVOLUNTARY BANKRUPTCY.

See BANKRUPTCY.

## JOINT LIABILITY

### 1. Joint Creditor, unless Partner, Cannot Vote.

A joint creditor who had proved the joint claim in bankruptcy sought to vote for assignee.

*Held*, That if the joint creditors were partners, he could vote the full amount of the debt; but if he was joint trustee or joint creditor and no partner, neither could act or vote without consent or authority of the other.—*Purvis*, vol. 1, p. 163.

### 2. Unaffected by Bankruptcy Proceedings.

A creditor may sue any one else liable on the same debt, and proceedings pending against others thereon, and unsatisfied judgments already obtained are not affected, discharged, or surrendered by the proving of the debt.—*In re Samuel W. Levy & Mark Levy*, vol. 1, p. 327.

### 3. Separate Petition — Joint Creditors Postponed to Separate Creditors.

Where there are both joint and separate debts, proved in a bankruptcy on a separate petition, the joint creditors are not entitled to participate in the distribution of the assets until the separate creditors are



paid in full. The exception allowing joint creditors to receive dividends *pari passu* with the separate creditors, in cases where there is no joint estate, and no solvent partner, is inoperative under the Bankrupt Law of 1867.—*Byrne*, vol. 1, p. 164.

#### 4. Against Joint and Separate Estate.

A creditor who holds the note of a co-partnership, consisting of three members, endorsed by one of them for part of his debt, and also three notes, each made by one of the copartners, and endorsed by the two copartners other than its maker, and who proves his debt against the makers of the notes only, is entitled to dividends out of the several estates, joint or separate, against which the proofs were made. The copartners in this case were accommodation makers or indorsers for the copartnership, which, as between the copartners, and in equity, was the principal debtor.

*Held*, That the 86th Section of the Bankrupt Act of 1867 does not prohibit such creditor from proving his debts and taking dividends against the joint and separate estates of his debtors, he being a legal creditor, the individual copartners in respect of the note bearing their individual names.—*Mead, Assignee, National Bank of Fayetteville*, vol. 2, p. 173.

#### 5. Security Against Separate Estate.

A joint creditor having security on the separate estate may prove against the joint estate without relinquishing his security—may prove his whole claim against both estates and receive a dividend for each, but so as not to receive more than the full amount of his debt from both sources.—*Howard, Cole & Co.*, vol. 4, p. 571.

#### 6. Dividends from both Joint and Separate Estate.

A creditor, the obligee of a joint and several bond given by the members of a co-partnership, is entitled to dividends out of the several assets of the individual bankrupts, members of the firm; the firm and its several members, having been adjudged bankrupts.—*Bigelow, Bigelow, & Kellogg*, vol. 2, p. 371.

#### 7. Counter Indebtedness.

A debtor who owes a debt to several creditors jointly cannot discharge it by setting up a claim which he has against one

of those creditors, as the others have no concern with his claim and cannot be affected by it, nor can one of several joint creditors, who is sued by the common debtor for a separate claim, set off the joint demand in discharge of his own debt, for he has no right thus to appropriate it. Equity will not allow him to pay his separate debt out of the joint fund, and if he had the assent of his co-obligees to do this it would be unjust to the suing debtor, because he has no reciprocal right to do the same thing.—*Gray v. Rollo, Assignee*, vol. 9, p. 337.

#### 8. Joint Tenants.

Where two premises are let jointly to A and B, and A agrees with B to divide the premises, and to each pay a proportionate part of the rent, A can only retain exclusive possession of the part so set apart to him so long as he complies with the condition of the separation, the payment of a proportionate part of the rent.

Failure by A to pay his proportional part, while it will deprive him as against B of the *exclusive* possession of the part set apart to him, yet it will not authorize B to entirely exclude him therefrom.—*Hotchkiss*, vol. 9, p. 488.

#### 9. Joint Request.

A joint request made by the individual members of a firm, soliciting B to become a surety of one of them in an administration bond, does not create a liability of the firm. Hence, upon the firm being declared bankrupt, B has no debt due therefrom, which is recoverable at law.—*Forsyth v. Woods*, vol. 5, p. 78.

#### JUDGE.

See COURTS.

#### 1. Incorrect Name.

Petition not to be filed when name of judge is incorrect.—*Anonymous*, vol. 1, p. 216.

#### 2. Disqualification of.

A judge who has been a depositor in an insolvent banking institution, but who has sold his claim, is not thereby disqualified from sitting in the matter, although the motive on the part of the purchaser of the claim may have been to remove the disqualification.—*Sime & Co.*, vol. 7, p. 407.

## JUDGMENT.

See COURT,  
FRAUD,  
INJUNCTION,  
LIEN,  
PREFERENCE,  
STAY OF PRO-  
CEEDINGS,  
USURY.

## JUDGMENT—

- I. *Attachment*, p. 456.
- II. *After Adjudication*, p. 456.
- III. *Creditor*, p. 456.
- IV. *Conclusiveness*, p. 457.
- V. *Confession*, p. 457.
- VI. *Corporation*, p. 457.
- VII. *Equitable Assets*, p. 458.
- VIII. *Fraud*, p. 458.
- IX. *Irregularity*, p. 458.
- X. *Lien*, p. 458.
- XI. *Merger*, p. 459.
- XII. *Note*, p. 460.
- XIII. *Preference*, p. 460.
- XIV. *Proof of*, p. 460.
- XV. *Restraining*, p. 461.
- XVI. *Setting Aside*, p. 461.
- XVII. *Title*, p. 461.
- XVIII. *Waiver*, p. 462.
- XIX. *Writ of Error*, p. 462.

I. *Attachment*.1. *Over Four Months*.

The provision in the United States Bankrupt Act, U. S. St. of 1867, C. 176, Section 14, that an assignment under the Act shall vest in the assignee the title to all the bankrupt's property, "although the same is then attached on *mesne* process," and "shall dissolve any such attachment made within four months next preceding the commencement of said proceedings" in bankruptcy, does not prevent the enforcement of a judgment against the bankrupt on a portion of his property attached in the action more than four months before he commenced proceedings in bankruptcy.—*Bates v. Tappan*, vol. 3, p. 647.

2. *Within Four Months on Different Judgment*.

A debtor's property was seized by the sheriff by virtue of an attachment issued out of a State court. After the levy of the attachment, two suits were commenced in

a State court, judgment obtained, executions issued and delivered to the sheriff. After such levy the debtor filed his petition, and was duly adjudged a bankrupt.

The judgment creditors moved for an order directing the payment of the judgments in full on the ground that, by the Bankrupt Act, the attachment was discharged, and there having been a *bona fide* levy under the executions, before the filing of the petition, the lien of the executions is saved by the Act.

*Held*, That the provisions of the Act do not indicate any intention to improve the condition of any creditor, or create new rights.

That, in the present case, all the right which the judgment creditor acquired was by a levy on property already subject to an attachment to its full value. Such a levy gave the judgment creditor no security, and does not entitle him to apply to this court for payment of his judgment in full.—*Klancke*, vol. 4, p. 648.

II. *After Adjudication*.3. *Does not Prevent Proof of Original Debt*.

A judgment rendered after proceedings in bankruptcy, on a debt provable at the commencement of proceedings in bankruptcy does not prevent the original debt being proved in the bankruptcy proceedings.—*In re Rosey*, vol. 8, p. 509.

4. *Contra*.

A creditor who obtains judgment for his debt after his debtor has been adjudicated a bankrupt, and takes out execution, cannot prove his debt in bankruptcy, and the judgment will not be affected by the certificate of discharge. Such a creditor, therefore, cannot oppose the bankrupt's discharge.—*In re Gallison et al.*, vol. 5, p. 353.

III. *Creditor*.5. *Cannot use Bankrupt Court to Avoid Conveyances*.

The District court will not take jurisdiction in bankruptcy on the petition of an only creditor, whose debt is secured by virtue of a judgment which is the only lien on real estate.

Such creditor seeking to set aside a fraudulent conveyance, must follow his remedy

by bill in the State court.—*Johann*, vol. 4, p. 434.

#### IV. *Conclusiveness.*

##### 6. Of Facts as Ascertained.

A judgment obtained in a State court is conclusive evidence, in a court of bankruptcy, of the fact ascertained by it, and binding on the court until reversed in due course of law.—*In re Ernest Hussman*, vol. 2, p. 438.

##### 7. Not Collaterally Attacked.

A judgment cannot be assailed in the Bankrupt Court, but the assignee and creditors must resort to the State court, to test its validity.—*Burns*, vol. 1, p. 174.

#### V. *Confession.*

##### 8. Not by Itself Sufficient to Invalidate Lien.

The fact that judgment was entered upon a warrant of attorney does not invalidate the lien, if the creditor did not know of the failing circumstances of the debtor, and if it was not entered up "in contemplation of bankruptcy or insolvency."—*Weeks*, vol. 4, p. 364.

##### 9. Without Knowledge of Insolvency.

A judgment lien is good against the proceeds of sale of lands in hands of assignee in bankruptcy, and is not a fraudulent preference, where the judgment creditor had entered the judgment in question under warrant of attorney, given with a certain promissory note made by the bankrupt, it not being shown that the bankrupt was insolvent at the time he made said note, or that the creditor knew of his insolvency at or before levy made.—*Armstrong v. Rickey Brothers*, vol. 2, p. 473.

##### 10. To Secure Present Advances.

Judgment notes given long before the judgment debtor was adjudged a bankrupt, and just previous to bankruptcy, to secure loans of money, and given at the times the money was advanced, are valid; and judgments entered upon such notes within a short time before the filing of the petition in bankruptcy will not be set aside by the Bankrupt Court.

Bill dismissed with costs.—*Edwin L. Piper v. E. H. Baldy*, vol. 10, p. 517.

##### 11. *Idem.*

Where a debtor, not being insolvent,

borrowed money and gave bond with warrant of attorney to the creditor to confess judgment, and he took judgment with notes of subsequent bankruptcy and levy made,

*Held*, The judgment was good against, and should be paid out of, the assets in court of the proceeds of sale of bankrupt's property.—*In re J. B. Wright*, vol. 2, p. 490.

##### 12. Given in Anticipation.

Where the bankrupt, being indebted to a creditor on promissory notes due and to become due, gave him a promissory note payable one day after date, with warrant to confess judgment, and judgment thereon was obtained in November, and execution levied on bankrupt's goods before proceedings in bankruptcy instituted by other creditors in January following,

*Held*, That such act of the bankrupt was an act of bankruptcy, and sought to give a preference to a creditor. Motion to satisfy the judgment from sale of the property denied.—*In re William H. Fitch et al. v. George B. McGie, ex parte Sanger*, vol. 2, p. 531.

##### 13. Validity Determinable at the Time of Entry.

The preference upon a judgment note is not obtained when the warrant of attorney is given, but when the judgment upon it is entered.

It is not a sufficient answer to say that the warrant of attorney was given to secure a *bona fide* debt, and that at the time the creditor had no knowledge of his debtor's insolvency. The question depends upon the knowledge or information which the creditor had at the time he made his warrant operative.—*Golson et al. v. Neihoff et al.*, vol. 5, p. 56.

#### VI. *Corporation.*

##### 14. Statutory Liability against Stockholders.

The bankruptcy of a corporation does not prevent judgment being obtained against the corporation, and the creditor, in default of obtaining satisfaction under the judgment from the property of the corporation, pursuing the remedy given to him by statute, against stockholders.—*Allen v. Ward*, vol. 10, p. 285.

**15. Dormant Judgment.**

The issuing of a writ of *fiery facias* upon a judgment recorded against the defendant in 1861, does not create such a lien upon his real estate as will be respected and enforced by the Bankruptcy Court, when the defendant has been subsequently declared a bankrupt so late as 1868.—*McIntosh*, vol. 2, p. 506.

**16. Pending Appeal.**

A judgment of the court below, from which an appeal is pending, is a final judgment, in contemplation of Section 21 of the United States Bankrupt Act.—*Merritt v. Glidden et al.*, vol. 5, p. 157.

**VII. Equitable Assets.****17. No Lien obtained on.**

No lien is obtained on equitable interests by judgment and execution alone, when creditors took no proceedings to reach such equitable interest, or establish an equitable lien.—*Hinds*, vol. 3, p. 351.

**VIII. Fraud.****18. Judgments obtained by, Superseded.**

Judgments obtained by parties acting in fraud of the Bankrupt Act must be held invalid, and all subsequent proceedings set aside as being superseded by the bankruptcy proceedings.—*Buchanan et al. v. Smith*, vol. 7, p. 513.

**19. Incidental to Cause of Action Merged in Judgment.**

But where the original debt arises in contract, and the fraud is but an incident on the debt and not its creative power, in such case the debt will be merged in judgment and the bankrupt discharged therefrom, where such judgment was obtained prior to the filing of the petition in bankruptcy.—*Shuman v. Strauss*, vol. 10, p. 300.

**20. Contra, if Ground of Complaint.**

Where the ground of a complaint is the fraud in creating a debt, judgment thereon does not merge the original indebtedness so as to free it from taint of fraud, or to permit it to be discharged in bankruptcy.—*Shuman v. Strauss*, vol. 10, p. 300.

**21. Bankrupt Court cannot Discharge.**

A Court of Bankruptcy has no power to discharge a judgment based upon a fraud of the bankrupt, and will not interfere to

prevent imprisonment therefor, unless to enable it to exercise its proper authority and jurisdiction.—*Pettis*, vol. 2, p. 44.

**IX. Irregularity.****22. In the Conduct of the Trial.**

A judgment will not be reversed because papers recognized on the trial in evidence were not *formally* read. Under the circumstances stated in the opinion, it was

*Held*, That the District Court did not err in allowing a deposition taken and filed by one party to be read in evidence by the other.—*Andrews v. Graves*, vol. 4, p. 652.

**X. Lien.****23. Levy made before Filing of Petition.**

Judgment was obtained in a State court and execution issued thereon, and levy made by sheriff on debtor's property before he filed his petition in bankruptcy.

*Held*, That the lien of the judgment creditors was good, and was not disturbed by the filing of said petition.—*Schnepf*, vol. 1, p. 190.

**24. After Filing Petition.**

A levy was made by the sheriff on certain goods of bankrupt after the date of filing his petition in bankruptcy, on a judgment rendered before the filing of the petition.

*Held*, That the title being vested in him, the assignee must make sale and deposit proceeds of such goods, subject to whatever claims may be determined by the court to be upon them, in consequence of the lien claimed by the judgment.—*G. W. Pennington, Assignee in Bankruptcy of James F. Stewart, v. Sale & Phelan et al.*, vol. 1, p. 572.

**25. Issuing Execution to Sheriff having Prior Levy.**

Before a voluntary petition was filed, an execution issued on a docketed judgment came into the hands of the sheriff, who had levied on and held personal property of the bankrupt under a prior execution.

*Held*, That liens against the real estate, by the New York law, were perfected in both cases within the saving clauses of Sections 14 and 20 of the Bankrupt Act, and that the sheriff should be allowed to sell the personal property to satisfy the

executions, and any deficiency would constitute a lien on the real estate, to be discharged on application to the court. — *Smith & Smith*, vol. 1, p. 599.

## 26. Without Doubt as to Solvency of Debtor.

Creditors taking out executions against the property of their judgment debtors, not having reasonable cause to believe them insolvent at the time, obtain a valid lien upon the property thus levied upon as against the assignee in bankruptcy, and when invalid levies are set aside they come into full operation.—*Black & Secor*, vol. 2, p. 171.

## 27. Idem, with Doubts.

Creditors holding a judgment may order execution to issue and levy upon and sell the property of their debtor, and the Bankrupt Law will protect them in the advantage thus secured, although they may have had, at the time of ordering the execution, doubts as to the solvency of the debtor.—*Kerr*, vol. 2, p. 388.

## 28. When Levy Necessary to Perfect.

L. C., a creditor, recovered two judgments, in a County Court of North Carolina, against a debtor, executions on which judgments were enjoined by the United States Military Commandant. The injunction was thereafter rescinded, and *fiery facius* were filed, but never delivered to or acted on by the sheriff. Subsequently two other judgments against said debtor were respectively obtained by R. T. and De V. & G., creditors, upon which executions issued, and property of debtor was levied on by the sheriff, before proceedings commenced in bankruptcy. Debtor thereafter was adjudged a bankrupt, and assignee was appointed, who agreed with the sheriff that the property so levied on should be offered and sold by the assignee, free from all incumbrances, on account of said executions and levies, and it was sold accordingly.

*Held*, That L. C., the senior judgment creditor, is not entitled to any of the proceeds of said sale, as he had no perfected lien upon the proceedings commenced in bankruptcy.

The action of the United States military officer, preventing him from issuing executions, does not help or cure the defect.

The junior judgment creditors are entitled to have their claims paid *pro rata* by the assignee out of said proceeds, after deducting expenses, costs, and fees of sheriff and assignee, and this by virtue solely of said agreement.—*Mebane*, vol. 3, p. 347.

## 29. Satisfaction when Unimpeached.

Where there is no dispute as to the validity of judgments under which executions were issued and levy made, the execution creditors are entitled to satisfaction out of the proceeds of the goods levied on by the sheriff, and afterwards seized by the United States marshal, under a warrant in bankruptcy.—*Swoope et al. v. Arnold*, vol. 5, p. 148.

## 30. Not Divested by Sale unless Specified.

Where an assignee in bankruptcy applied to the United States District Court for leave to sell the bankrupt's real property, subject to certain specified liens, and an order was made accordingly, and after the sale the assignee reported to the court that he had sold the property free from all other liens except those named,

*Held*, That the lien of a *bona fide* judgment creditor who was not named in any of the proceedings was not destroyed, for the reason that the said court did not ratify such sale as "free from all liens except those mentioned," although confirming the report made by the assignee.—*McGilton et al.*, vol. 7, p. 294.

## 31. Not a Vested Right.

A lien by judgment does not create any *vested right* in the property subject to such lien.—*Jordan*, vol. 8, p. 180.

## 32. On Foreign Judgment.

A bank in Canada, seeking to prove its debt in this court, must account for property converted to its use in Canada, to the assignee. Proof can be made and dividends taken upon the original debt only, without regard to a subsequent judgment.—*In re Bugbee*, vol. 9, p. 258.

## XI. Merger.

## 33. Debt not Merged by Subsequent Judgment.

A creditor may prove a claim based on a debt existing at the time of proceedings commenced in bankruptcy, notwithstanding



ing he may in a suit to recover the same have obtained judgment thereafter. — *Brown*, vol. 3, p. 584.

### 34. *Idem.*

Where judgment is rendered on a debt after petition filed in bankruptcy but prior to the adjudication, the debt is not so merged in the judgment as to render it incapable of proof. — *Vicery*, vol. 3, p. 696.

### 35. Question.

Is a simple contract debt, existing at and before the filing of the petition for adjudication of bankruptcy, on which a judgment has been rendered *after* such filing, the same debt within the meaning of the several provisions of the Bankrupt Act relating to the proof of claims against the estates of bankrupts? — *Crawford*, vol. 3, p. 698.

### 36. Contra, in Case of Fraudulent Preferences.

Creditors petitioned to have debtors adjudged bankrupts. The debt due the creditors had been merged in a judgment which was clearly a fraudulent preference.

*Held*, That a debt having been thus merged it was not a provable debt, and a petition founded upon it could not be sustained.

In such a case, however, creditors will be allowed to surrender their preference, and, upon their doing so, the acts of bankruptcy being confessed, an adjudication will be ordered. — *In re Hunt & Hornell*, vol. 5, p. 433.

### 37. Judgment Extinguishes Debt.

A judgment extinguishes the debt upon which it was founded, and constitutes a new debt. A judgment obtained after an adjudication of bankruptcy is not provable against estate of bankrupt. — *In re Williams* vol. 2, p. 229.

### 38. Contra.

The fact that a claim existed at the time of giving the mortgage, as a liability and not as a debt, does not change the relation of the party, and a subsequent judgment was neither a payment nor a satisfaction of it. — *Burfee*, vol. 9, p. 314.

## XII. Note.

### 39. Given over Four Months although Judgments Entered within.

A judgment note given for a valuable

consideration more than four months before the commencement of proceedings in bankruptcy, on which judgment is entered and execution issued within four months of the commencement of proceedings in bankruptcy, valid. — *Steele et al. v. Turner's Assignee*, vol. 10, p. 580.

### 40. *Idem.*

Judgment notes given long before the judgment debtor was adjudged a bankrupt, and just previous to bankruptcy, to secure loans of money, and given at the times the money was advanced, are valid; and judgments entered up on such notes within a short time before the filing of the petition in bankruptcy will not be set aside by the Bankrupt Court. — *Edwin L. Piper v. E. H. Baldy*, vol. 10, p. 518.

## XIII. Preference.

### 41. Mere Obtaining Judgment is not.

The taking of property on attachment or execution is receiving a preference; the mere obtaining of judgment, however, is not. — *Stevens*, vol. 4, p. 367.

### 42. Nor unless Petition filed within Six Months.

A judgment taken contrary to the Bankrupt Act is not void, unless a petition in bankruptcy is filed by or against the debtor within six months from the entry of the judgment. — *Fuller*, vol. 4, p. 115.

### 43. Obtained without Fraud or Collusion.

Section 35 of the Bankrupt Act does not declare void a *judgment* obtained against an insolvent debtor, under any circumstances, and the same, if obtained without fraud or collusion with the debtor, is as conclusive evidence of the claim and its amount as if given against a solvent debtor. — *Catlin v. Hoffman*, vol. 9, p. 342.

### 44. Surrender of.

It is not necessary for creditors who have recovered judgments after the adjudication of their debtor, to vacate their judgments before they can prove the claims on which such judgments were recovered, provided the claims were otherwise valid and properly provable. — *Stevens*, vol. 4, p. 367.

## XIV. Proof of.

### 45. Note Need not be Produced.

If debt was proved on the judgment on a



note, the note need not be produced.—*Knoepfel*, vol. 1, p. 70.

**46. Waived by Entering of Judgment.**  
—Proof of Debt.

When the United States elect to take judgment upon a bond of a bankrupt, they part with all the right to prove it as a debt due and payable from the bankrupt at the time of the adjudication of bankruptcy, and as a debt to be proved against the estate; that it is *res judicata* that this debt is not affected by the discharge, as the judgment is subsisting and operative.—*Mansfield*, vol. 6, p. 388.

**XV. Restraining.**

**47. When Valid should not be.**

When a judgment against the bankrupt is valid, the judgment creditor ought not to be restrained from selling any alleged interest of the bankrupt in the property, on the application of the assignee in bankruptcy, unless the want of such interest is clearly shown to the court. The plaintiff should be allowed to sell and the purchaser can try his title by ejectment.—*Reeser v. Johnson*, vol. 10, p. 467.

**XVI. Setting Aside.**

**48. When Offered for Proof.**

When a judgment debtor is offered for proof against the estate in bankruptcy of the debtor, whose petition was filed after the date of judgment, it may be objected to by other creditors on the ground of fraud or irregularity, including fraudulent preference; for they are not parties nor privies to the judgment, and may impeach it collaterally.—*In re James L. Fowler, ex parte O'Neil*, vol. 1, p. 677.

**49. Against an Insolvent by Default.**

Where a judgment is obtained, for want of an answer, against an insolvent debtor, and such judgment is docketed in the lien docket, so as to become a lien upon the real property of such debtor,

*Held*, That such lien being created with the implied consent of the debtor, it was in effect a transfer by him to the creditor, and void under the first clause of Section 35 of the Bankrupt Act.—*Catlin, Assignee, v. Hoffman*, vol. 9, p. 342.

**50. Suffering Recovery.**

Where a judgment is regularly recov-

ered under the laws of a State, and execution and levy has duly followed the entering of a judgment, *even though* prior to the commencement of bankruptcy proceedings, the same are void if the debtor suffered the recovery of the judgment, and the subsequent execution and levy, and the creditor had reasonable cause to believe the debtor insolvent.—*Beattie, Assignee, v. Gardner et al.*, vol. 4, p. 323.

**51. Contra.**

Under a sound construction of Sections 35 and 39 of the Bankrupt law, something more than passive non-resistance in an insolvent debtor is necessary to invalidate a judgment and levy on his property when the debt is due and he has no defense.

A lien thus obtained by him will not be displaced by subsequent proceedings in bankruptcy, though commenced within four months after levy of the execution or rendition of the judgment.

Very slight circumstances, however, which tend to show the existence of an affirmative desire, on the part of the bankrupt, to give a preference or to defeat the operation of the Act, may, by giving color to the whole transaction, render the lien void.

These special circumstances must be left to decide each case as it arises.—*Wilson, Assignee, v. City Bank of St. Paul*, vol. 9, p. 97.

**52. When others Liable with Bankruptcy.**

Unsatisfied judgments, already obtained against others liable with the bankrupt, are not affected, discharged, nor surrendered by proving the debt against him.—*Levy & Levy*, vol. 1, p. 327.

**53. Debts Created by Fraud.**

A judgment creditor proved the debt in bankruptcy, which was shown, by the record of proceedings in the State courts, to have been created by fraud. The District Court refused to direct satisfaction of the judgment.—*Robinson*, vol. 2, p. 341.

**XVII. Title.**

**54. Not Divested by Judgment and Levy.**

Neither judgment nor levy of execution divests the alleged bankrupt of his property, and he would be bound to include such

estate in his inventory if adjudged a bankrupt.—*Lady Bryan Mining Co.*, vol. 6, p. 252.

#### 55. At Sheriff's Sale under Voidable Judgment.

A purchaser at sheriff's sale, after proceedings commenced in bankruptcy, where the levy was made prior thereto, will acquire a good title notwithstanding that the judgments under which the sale took place are afterwards declared void in fraud of the Act.—*Zahm, Assignee, v. Fry, et al.*, vol. 9, p. 546.

#### 56. On undue Claim.

Where a creditor obtained judgment for a debt not yet payable, and thereby obtained a lien by levy on the goods of the debtor,

*Held*, The lien was invalid against the estate in bankruptcy of the debtor, in the circumstances did not prove a lien preference.—*Partridge v. Dearborn et al.*, vol. 9, p. 474.

### XVIII. Waiver.

#### 57. By Filing Petition.

A creditor who has a lien upon the property of his debtors by virtue of a judgment, etc., filing a petition for an adjudication of bankruptcy without reference to such lien, thereby waives and relinquishes the same, and stands before the court as an unsecured creditor.—*Bloss*, vol. 4, p. 147.

#### 58. Proving Debt against Corporation is Not.

Proving a debt and recovering dividends in bankruptcy against a corporation is no bar to recovering judgment for the balance in a State Court.—*Ansonia Brass Co. v. New Lamp Chimney*, vol. 10, p. 355.

### XIX. Writ of Error.

#### 59. Proof Pending.

At common law a writ of error and *supersedeas* of execution leaves the judgment intact, and it is a provable debt in bankruptcy. Where a judgment on which a *supersedeas* and stay of execution has been granted by the State Court pending the decision of a writ of error, is proved in bankruptcy, the court will stay the payment of any dividends on the claim during the pen-

dency of the writ of error.—*In re Sheehan*, vol. 8, p. 345.

### JUDICIAL PROCEEDINGS.

#### Examination in Supplemental Proceedings.

An exemplified copy of an examination of the debtor, taken under the laws of the State of New York, under supplemental proceedings upon a judgment, was offered, for the purpose of proving admissions of the debtor.

*Held*, That under the Act of Congress approved May 26, 1790, such copy was proper evidence, such examination being "judicial proceedings" within the meaning of said Act.—*In re C. J. Rooney*, vol. 6, p. 163.

### JUDICIAL NOTICE.

#### State Courts.

The State courts are bound to take judicial notice of the existence of the Federal courts, and it is also supposed that they will know something of the laws of Congress, though not generally called on to administer them.

It is not necessary in many instances to prove the official character of public officers, nor to prove in a State court an order of the District Court directing assignee to sell the bankrupt's assets.—*J. P. Morris et al. v. H. Swartz*, vol. 10, p. 305.

### JURISDICTION.

See APPEAL,  
APPEARANCE,  
ASSETS,  
ASSIGNEE,  
ASSIGNMENT,  
BANKRUPT,  
COURT,  
DIFFERENT DIS-  
TRICT,  
EQUITY,  
LIEN,  
MINOR,  
PARTNERS,  
PRACTICE.

## JURISDICTION—

- I. *Amount Due*, p. 463.
- II. *Bankrupt Court*, p. 463.
- III. *Carrying on Business*, p. 463.
- IV. *Circuit Court*, p. 464.
- V. *Consent*, p. 464.
- VI. *Corporation*, p. 464.
- VII. *Discharge*, p. 465.
- VIII. *Discontinuance*, p. 465.
- IX. *District Court*, p. 465.
- X. *Domicile*, p. 466.
- XI. *Equitable*, p. 466.
- XII. *Exclusive*, p. 467.
- XIII. *Foreclosure Mortgages*, p. 467.
- XIV. *Judgment*, p. 467.
- XV. *Levy*, p. 467.
- XVI. *Lien*, p. 467.
- XVII. *Non-Resident*, p. 468.
- XVIII. *Paramount*, p. 468.
- XIX. *Partners*, p. 468.
- XX. *Penalty*, p. 469.
- XXI. *Plea*, p. 469.
- XXII. *Proof of Claim*, p. 469.
- XXIII. *Proportion of Creditors*, p. 469.
- XXIV. *Railroad*, p. 470.
- XXV. *Receiver*, p. 470.
- XXVI. *Residence*, p. 470.
- XXVII. *State*, p. 471.
- XXVIII. *State Court*, p. 471.
- XXIX. *Summary*, p. 472.
- XXX. *Supreme Court*, p. 473.
- XXXI. *Title*, p. 473.
- XXXII. *Verification*, p. 473.

I. *Amount Due.*1. *At Time of Trial.*

The District Court has no jurisdiction of an involuntary case in bankruptcy, unless it appears on the trial that the debtor, at that time, owes debts provable under the Act exceeding the sum of three hundred dollars, and is indebted to the petitioning creditors in the amount of two hundred and fifty dollars. This is true even though the debtor, at the time of the filing of the petition, was indebted to exceed those sums. When his indebtedness, by subsequent payments, is reduced below those sums, the court loses jurisdiction. The latter clause of Section 41 of the Act was intended to allow the debtor to disprove all

the material allegations of the petition.—*In re Skelley*, vol. 5, p. 214.

II. *Bankrupt Court.*2. *Commencement of Proceedings in, Acts as Supersedeas.*

The commencement of proceedings in bankruptcy transfers to the United States District Court, the jurisdiction over the bankrupt, his estate, and all parties and questions connected therewith, and operates as a supersedeas of the process in the hands of the sheriff, and an injunction against all other proceedings than such as might thereupon be had under the authority of that court, until the question of bankruptcy shall have been disposed of.—*Jones v. Leach et al.*, vol. 1, p. 595.

3. *Not Exclusive.*

Nothing in the Bankrupt Act declares the United States courts the only forums where a distribution of a debtor's property can be consummated; and the jurisdiction of other tribunals of competent authority is neither expressly nor impliedly excluded.—*Clark v. Bininger*, vol. 8, p. 518.

4. *Idem, in Winding up Corporations.*

The Bankrupt Act does not divest the States of power to pass laws for winding up the estates of insolvent corporations. The jurisdiction conferred upon Courts of Bankruptcy in this respect is superior, but not exclusive, to that of the State laws.—*Chandler v. Siddle*, vol. 10, p. 236.

III. *Carrying on Business.*5. *Longest Period within Six Months.*

A copartnership had carried on business in New York and Massachusetts for two months, within the period of six months, before one member, without the consent of the others, filed his petition in bankruptcy, with schedules of individual and copartnership liabilities and assets, praying that petitioner and the firm members be respectively adjudged bankrupt. The firm as such had done business nowhere else, and for no longer time than two months within the period stated.

*Held*, The petition having first been filed in this district, the court has jurisdiction of the firm and its members.—*Foster & Pratt*, vol. 3, p. 237.

IV. *Circuit Court.***6. Revisory, Extends to all Decisions not Reviewable on Appeal or Writ of Error.**

The general revisory jurisdiction of the Circuit Court extends to all decisions of the District Court, or district judge at chambers, which cannot be reviewed upon appeal or writ of error, under the provisions of said section.—*Alexander*, vol. 3, p. 29.

**7. Revisory only.**

The powers of the Circuit Court in bankruptcy cases are revisory only, and the proceedings for review bring only the decree and orders involved in it before the Circuit Court, and do not operate to transfer to it the entire bankruptcy proceedings, to be continued there as a court of first instance.—*Clark & Bininger*, vol. 3, p. 487.

**8. District Court Refusing Discharge.**

The Circuit Court has jurisdiction of a petition to revise the decision and judgment of the District Court refusing to grant to a debtor a certificate of discharge from his debts under the Bankrupt Act.—*Littlefield v. Delaware & Hudson Canal Co.*, vol. 4, p. 258.

**9. Confirmation of Sale.**

The decision of a District Court, sitting in bankruptcy, upon an application to confirm a sale made of a bankrupt's estate, is not a matter within the general supervisory jurisdiction conferred by Section 2 of the Bankrupt Law of 1867, 14 Stat. at L., 520, upon the Circuit Courts.—*York & Hoover*, vol. 4, p. 479.

**10. Revisory only.**

The jurisdiction of this court is revisory, and a party cannot come here in the first instance to make his case or present any question for decision.—*Alabama & Chattanooga Railroad Co. v. Jones*, vol. 7, p. 145.

**11. Error to be Demonstrated.**

When the revisory jurisdiction of the Circuit Court is invoked over the decision of the District Court upon a question of fact, the burden of proof is on the petitioner for review to show cause in the decision, and he must also show that the ev-

idence cannot support the finding.—*In re Dow*, vol. 6, p. 10.

**12. Concurrent does not Embrace Collection of Debts.**

The concurrent jurisdiction conferred upon the Circuit Court by Section 2 of the Bankrupt Act is limited to cases where there is a controversy concerning the right to, or some interest in, some specific thing between the assignee and a third person, and does not include an action to collect a simple debt.—*Bachman, Assignee, v. Packard*, vol. 7, p. 353.

V. *Consent.***13. Cannot Confer.**

Consent cannot give jurisdiction. It makes no difference whether the proceedings are voluntary or involuntary. As all creditors are parties to and are bound by proceedings in bankruptcy that are regular, an adjudication which is not made and carried on within the proper jurisdiction should be set aside and vacated.—*In re Fogerty & Gerrity*, vol. 4, p. 451.

VI. *Corporation.***14. Exclusive.**

A bank incorporated under the laws of the State of Louisiana became insolvent, and the Attorney-General of the State, in 1868, proceeded in the State court at the instance and by request of the bank, and thereupon a decree was rendered, forfeiting its charter, and directing its affairs to be wound up in accordance with the insolvent laws of the State. In 1869, the creditors of the bank petitioned to have its assets surrendered, and administered upon in bankruptcy, and were opposed by the State Insolvent Commissioners.

*Held*, The State court had no jurisdiction in the premises except to the extent of decreeing a forfeiture of the bank charter when its jurisdiction ended.—*Thornhill & Williams et al. v. Bank of Louisiana*, vol. 3, p. 435.

**15. Idem.**

The object and intent of the United States Bankrupt Act of 1867 is to place the administration of the affairs of insolvent persons and corporations exclusively under the jurisdiction of the Federal Courts. Hence, the appointment of a re-

ceiver for an insolvent insurance company by a State court is an act of bankruptcy, being a "taking on legal process" within the meaning of the 39th Section of said act; the United States courts sitting in bankruptcy having in such cases exclusive jurisdiction over the property.—*In re Merchant's Insurance Co.*, vol. 6, p. 43.

#### 16. Remains after Dissolution of a Corporation by State Court.

A corporation dissolved by a decree of a State court before adjudication, but after the service of an order to show cause, still exists for the purpose of being proceeded against in bankruptcy, as such dissolution does not deprive the District Court of its jurisdiction or abate the proceedings.—*Platt v. Archer*, vol. 6, p. 465.

#### 17. Idem.

A decree of a State court dissolving an insurance company incorporated under the laws of the State, and appointing receivers to take and distribute the property of the company, and enjoining the latter from the further prosecution of its business, which decree was founded upon the insolvency of the corporation, does not take away the jurisdiction of the District Court of the United States to adjudge the corporation bankrupt. The State laws do not extend to all the matters arising in bankruptcy, such as preferences and property out of the State, and even if it be granted that the State courts have concurrent jurisdiction of an insolvent corporation, they have not full jurisdiction of the subject-matter.—*In re Independent Insurance Co.*, vol. 6, p. 169.

#### 18. Majority of Corporators.

When the petition in bankruptcy was filed without proper authority, the Register acquired no jurisdiction. Under the provisions of the 37th Section the filing of the petition must be "duly authorized by a vote of the majority of the corporators, at any legal meeting called for the purpose." No other petition can be recognized under the act.—*Lady Bryan Mining Co.*, vol. 4, p. 394.

### VII Discharge.

#### 19. Want of Jurisdiction.

Want of Jurisdiction is good ground to refuse a discharge. A discharge granted

without jurisdiction is no discharge.—*Penn et al.*, vol. 3, p. 582.

### VIII. Discontinuance.

#### 20. Not Enforced—When Complete, Relief cannot Follow.

This court might set aside a stipulation of discontinuance, upon satisfactory proof that it was obtained by fraud, or given improperly under a mistake of fact, but this would be of no advantage to the bankrupt unless the release was also set aside, which could not be done for the reason that it was an act between the parties carrying out a settlement privately made out of court and that by a dismissal of the proceedings the case passed out of the jurisdiction of the Bankruptcy Court.—*In re Bieler*, vol. 7, p. 552.

### IX. District Court.

#### 21. Confined to District where Proceedings Pending.

The provisions of the Bankrupt Act confer upon the United States District courts a general superintendence and jurisdiction of all cases and questions arising under the Bankrupt Act, but this jurisdiction is confined to the court within and for the district where the proceedings in bankruptcy shall be pending. An action brought by an assignee in bankruptcy in a District court other than the one in which the proceedings in bankruptcy were pending was dismissed. An appearance and answer by a defendant does not preclude him from raising the question of jurisdiction. Courts of bankruptcy are the special creatures of statutory law, and all their jurisdiction is derived from the act which creates them.—*Jobbins v. Montague et al.*, vol. 6, p. 509.

#### 22. Idem.

A United States District court, of a district other than that in which bankruptcy proceedings are pending, has not jurisdiction under which an assignee can commence an action for the recovery of assets, and such a suit will be dismissed for want of jurisdiction.—*Lamb, Assignee, v. Dameron*, vol. 7, p. 509.

#### 23. Contra.

The defendant contends that no jurisdiction is conferred in this case by the 9th Section of the Judiciary Act, or by any Act

of Congress other than the Bankrupt Act, giving jurisdiction to the District Court in common-law suits between party and party; and that the Bankrupt Act does not confer jurisdiction in such a case in a district other than that where the proceedings in bankruptcy are pending.

*Held*, That Congress in framing the Bankrupt Act intended to provide the means for the execution of the law in all cases.

Congress also intended to provide for the complete administration of the bankrupt system in the Federal courts and through the instrumentality of Federal officers: more especially as otherwise there is no right under the Bankrupt Act to maintain suits for the collection of assets of the bankrupt in any Federal court in a case like the one under consideration, where the debtor resides out of the district in which the proceedings in bankruptcy are pending.—*Sherman in error v. Bingham et al.*, vol. 7, p. 490.

#### 24. *Idem*.

The 2d Section relates exclusively to the jurisdiction of the Circuit courts under the act. Its provisions cannot, therefore, properly be referred to to limit the jurisdiction of the District Court, conferred by the 1st Section.

The 2d Section does not authorize a suit for the collection of debts in the Circuit Court; if, therefore, such suits are not included in, and necessarily implied from the 1st Section, there is no right under the Bankrupt Act to maintain suits for such purpose in any Federal court.—*Goodall, Assignee, v. Tuttle*, vol. 7, p. 193.

#### 25. *Idem*.

District courts of the United States have jurisdiction, by reason of the subject matter, over all proceedings in bankruptcy, and over all actions brought by assignees in bankruptcy, even though such actions be not brought in the district where the proceedings are pending.—*Payson v. Dietz*, vol. 8, p. 198.

### X. *Domicile*.

#### 26. *Sine Animo Revertendi*.

Where a bankrupt born in Boston became domiciled in California, but left that State with no intention of returning, and,

after staying without the United States several months, returned to Boston, and in less than two months thereafter filed his petition in bankruptcy, the act of leaving California with no intention of returning at once revived the domicile of origin, and a petition filed in this district cannot be vacated for want of jurisdiction, notwithstanding that the bankrupt has not resided within the district for the greater part of six months next preceding the filing of the petition.—*In re Wm. S. Walker; Ex parte I. S. Wiggin*, vol. 1, p. 886.

### XI. *Equitable*.

#### 27. *Conferred on District Court*.

The United States Bankrupt Act now in force confers jurisdiction in equity upon the District Courts in certain cases.—*Scammon v. Cole et al.*, vol. 5, p. 257.

#### 28. *Idem*.

Under the provision of the Bankrupt Act the District Courts have jurisdiction both in law and equity.—*Fendley*, vol. 10, p. 250.

#### 29. *Adequate Remedy at Law*.

Where the remedy at law is plain, adequate and complete, without any reasonable doubt, equity will decline the jurisdiction, provided the objection is taken by demurrer, or is claimed in the answer.—*Garrison, Assignee, v. Markley*, vol. 7, p. 246.

#### 30. *Waived by Delay in Objecting*.

A court of equity will not refuse to take jurisdiction of a cause merely on the ground that complainant has a complete remedy at law, where, as in this case, the parties have submitted their rights to the jurisdiction of the court without objection, especially where proofs have been taken and a hearing upon the merits has been entered upon.—*Post v. Corbin*, vol. 5, p. 12.

#### 31. *Discovery of Particulars*.

Where the complainant knows what the goods transferred in fraud of the Bankrupt Act consisted of, he cannot claim equity jurisdiction on the ground of discovery, because he is ignorant of their precise amounts, for he can compel the examination of the preferred creditor, and obtain a full disclosure.—*Garrison v. Markley*, vol. 7, p. 246.



**32. To Set aside Fraudulent Conveyances.**

The District Court has jurisdiction of a bill in equity by an assignee in bankruptcy to set aside a conveyance of land alleged to be fraudulent as to creditors, although there may be concurrent remedy at law.—*Pratt, Jr., v. Curtis et al.*, vol. 6, p. 189.

**33. For Settlement of Priorities.**

Where a bill must be dismissed for want of equity, jurisdiction will not be retained to settle the priorities or equities between the defendants.—*Smith v. Little*, vol. 9, p. 111.

**XII. Exclusive.****34. In Matters Arising under Bankrupt Act.**

The jurisdiction of United States District courts, sitting as courts of bankruptcy, is superior and exclusive in all matters arising under the Bankrupt Act.—*In re R. H. Barrow; Re Loeb, Simon & Co.; Re W. D. Winter*, vol. 1, p. 481.

**35. Insolvent Debtor.**

The United States courts have exclusive jurisdiction in the case of an insolvent debtor, whether he can or cannot obtain a discharge in bankruptcy.—*Van Nostrand v. Barr et al.*, vol. 2, p. 485.

**XIII. Foreclosure Mortgages.****36. Plenary Suit.**

Jurisdiction to foreclose mortgages upon the estate of a bankrupt is not included in the powers to be exercised summarily under the 1st Section of the Bankrupt Act, and more especially when the alleged mortgagee claims adversely to the assignee and to other mortgagees, and where the title of the applicant is denied, the amount claimed disputed, and it is insisted that if any lien ever existed, it was released.

Such controversies must be connected by a suit to which all persons claiming adversely to the complainants are made parties, and where each will have the right of appeal given by the law (where the amount is sufficient) to the Supreme Court of the United States. The appeal to the Circuit Court, provided for by the 8th Section of the Bankrupt Act, are appeals in that class of cases mentioned in the third paragraph of Section 2: "Suits at law or in equity which may be brought by an assignee in

bankruptcy against any person claiming an adverse interest or by such person against such assignee touching any property or rights of property of such bankrupt, transferable to or vested in such assignee."—*Casey*, vol. 8, p. 71.

**37. Restraining in State Court.**

Mortgagees of certain realty assets of a bankrupt corporation brought suit in State court to foreclose, and made assignee in bankruptcy a defendant. Assignee filed petition in the United States District Court, praying that proceedings in the foreclosure suit be stayed, and that the mortgage be set aside as invalid. Further proceedings were accordingly enjoined, whereupon mortgagees petitioned for review, denying the jurisdiction of the District Court upon the petition of the assignee aforesaid.

*Held*, That the District Court had jurisdiction under Section 1 of the Bankruptcy Act.—*N. Y. Kerosene Co.*, vol. 8, p. 125.

**XIV. Judgment.****38. In State Court Enjoined.**

The Bankrupt Court may enjoin a party proceeding to judgment and execution in a State court; where there is a joint judgment against a third party and a bankrupt, the injunction against proceeding against the bankrupt does not stay the execution against the stranger.—*Penny v. Taylor*, vol. 10, p. 201.

**XV. Levy.****39. Power to Remove Doubted.**

Whether the Bankruptcy Court has power to assume possession and control of property levied on by a sheriff prior to the proceedings in bankruptcy—*quære?* *Wilbur*, vol. 8, p. 276.

**XVI. Lien.****40. To Discharge—not Exclusive.**

United States District courts have full and adequate jurisdiction in all matters relating to bankruptcy at law and in equity. Its jurisdiction, however, to sell real estate and pay off liens is not exclusive.—*In re Thomas F. Bowie*, vol. 1, p. 628.

**41. Sale Free of Incumbrances.**

The United States District Court for Louisiana has judicial power to authorize the sale by the assignees of real estate sur-

rendered by bankrupts, free and discharged of all debts secured by mortgage thereon. — *In re R. H. Barrow et al.*, vol. 1, p. 481.

#### 42. Without Proof of Debt.

Chattel mortgagee petitioned to have his mortgage declared a valid and subsisting lien on property of bankrupts, and that the assignee be ordered to surrender to him the mortgaged property. Assignee objected to the jurisdiction of the Bankruptcy Court until the mortgagee should prove his debt against the estate.

*Held*, The court has concurrent jurisdiction with other tribunals to hear and determine the question of lien in the premises. — *High & Hubbard*, vol. 3, p. 191.

#### 43. Liquidation of.

The District Court has jurisdiction to ascertain and liquidate all liens upon the bankrupt's property, and in the exercise of this jurisdiction may enjoin a creditor from enforcing a judgment in a State court against the property of the bankrupt; but after the process of the State court has been executed by a sale of property, the District Court will not interfere. — *Fuller*, vol. 4, p. 116.

### XVII. Non-Resident.

#### 44. Subpoena Served beyond the District.

The assignee filed his bill in equity in Maine to recover certain preferences of the respondent, who resided in and was a citizen of Massachusetts, and had no property in that district, and was not found there. The subpoena was served on respondent in Massachusetts, who appeared to object to the jurisdiction of the court.

*Held*, That the court did not have jurisdiction to proceed against the respondent. *Paine, Assignee, v. Caldwell*, vol. 6, p. 558.

### XVIII. Paramount.

#### 45. Bankrupt Court over State.

That when there is a conflict of jurisdiction, the State courts must yield to the United States Bankrupt Courts, within the time limited by statute. The latter should assert their authority, but should the Probate Court of the State attempt to grant a certificate of discharge to an insolvent debtor, neither this court nor the courts of other States would give effect to any such

certificate. — *Maltbie & Hotchkiss*, vol. 5, p. 485.

#### 46. Administration, Estate of Insolvent.

No power exists to wrest from the jurisdiction of the courts in bankruptcy the assets of such bankrupt individuals and corporations, as are within the scope of the provisions of the United States Bankrupt Act. — *Independent Insurance Co.*, vol. 6, p. 260.

#### 47. Congress on the Subject of Bankruptcies.

The plenary and paramount power of Congress to establish uniform laws on the subject of bankruptcies throughout the United States, is given in express terms by the Constitution of the United States. It is, therefore, very clear that when Congress has exercised the power thus conferred, their action must necessarily control or limit the exercise of the power of the States over the same subject-matter; and that whenever any State legislation or any action of the State courts comes practically into actual conflict with the proper execution of the laws of Congress, constitutionally passed under such grant of power, State legislation, and the jurisdiction and action of the State courts must yield to the paramount authority of the national government. — *In re Safe Deposit Savings Institution*, vol. 7, p. 893.

### XIX. Partners.

#### 48. New Firm.

A firm, originally composed of three members, was dissolved by the withdrawal of one. The two remaining members, constituting a new firm, subsequently filed their petition in bankruptcy. Upon objection being made by the member of the firm who had withdrawn, it was

*Held*, That the court has jurisdiction of the petition of the two partners, though the firm may have been composed of three. — *Mitchell et al.*, vol. 3, p. 441.

#### 49. When Prior Proceedings Commenced in State Court.

A partner brought action in State court against his copartner for a settlement and winding up of the partnership, and receivers were appointed who took possession of the partnership property. The firm, with its partners, was subsequently adjudged bankrupt, on petition of creditors,

and assignee in bankruptcy was appointed, who applied and obtained an order from the United States District Court, enjoining the plaintiff to the actions in the State court from further proceedings therein, and that he execute proper instruments to substitute therein the assignee in bankruptcy. On further application of assignee that an order issue for the marshal to take possession of the joint property from the receivers of the State court, etc.,

*Held*, No allegation is made impeaching the validity of the transfer to and lawful custody of the joint property by the receivers of the State court, and the Bankruptcy Court has no jurisdiction to grant the particular relief asked. Application denied.—*Clark & Bininger*, vol. 3, p. 524.

#### 50. Residing in Different Districts.

Where one member of a firm files his petition in one State, and requests his copartners to join him in the proceedings, which they refuse to do, but subsequently appear by attorney and consent to an adjudication, whereupon all the members of the firm are adjudicated bankrupt, and upon the application for the discharge of the bankrupts, specifications were filed in opposition to their discharge on the ground of a want of jurisdiction,

*Held*, That Section 36 is taken in connection with Section 11, supplemented by General Order XVIII., should be construed together. Section 36 provides that, "if such copartners, that is copartners in trade, who are sought to be adjudged bankrupts on the petition of themselves or any one of them, or of any creditor of theirs, reside in different districts, that court in which the petition is first filed shall retain exclusive jurisdiction over the case, that is, over the subject matter of the petition and over all the copartners, if the non-petitioning copartners be brought in by appropriate process. Objections to jurisdiction overruled.—*In re Penn et al.*, vol. 5, p. 80.

### XX. Penalty.

#### 51. May Pass on Legality of Claim.

The United States District Court has jurisdiction to allow or disallow claims against a bankrupt estate, and, therefore, to pass upon their legality; and this, although it may not have jurisdiction to enforce a pen-

alty imposed by the State law on account of an act making any such claim illegal.—*In re Pittock*, vol. 8, p. 78.

### XXI. Plea.

#### 52. Interposed in Appellate Court.

A plea to the jurisdiction may be interposed, in the first instance, in the appellate court, when the objection is of a nature which could not have been obviated if interposed in the court of original jurisdiction, as an objection, that the court had not jurisdiction of the subject-matter of the action.—*Cook v. Waters et al.*, vol. 9, p. 155.

### XXII. Proof of Claim.

#### 53. Subjects Creditor to Order of Court.

When a creditor presents his claim for probate, he at once subjects himself and his claim to the power and jurisdiction of the court, and becomes subject to its orders within the provisions of the Bankrupt Act, among which is the provision that the court may examine such creditor concerning the debt sought to be proved. He is, therefore, so examined as a party to the proceedings, and is in no sense a "witness." Hence the refusal of the assignee to pay witness fees, under such circumstances, must be sustained.—*In re Paddock*, vol. 6, p. 396.

#### *Idem.*

When a creditor has proved his debt he is subject to the jurisdiction of the court, irrespective of his place of residence.—*Kyler*, vol. 2, p. 650.

#### 54. Conferred by Filing the Proof.

The receipt and filing of proof of debt alone confers jurisdiction over the claim on the court, and then only does its revising power over such proof, mentioned in the Act of 1868, commence. The receiving and filing of a proof of debt concludes nothing, and the power still remains in the court to revise and correct, or reject such proof altogether.—*In re Merrick*, vol. 7, p. 459.

### XXIII. Proportion of Creditors.

#### 55. Under Amendment, 1874.

Under the Act of June 22, 1874, the court has no jurisdiction of the petition, unless one-fourth in number and one-third in value made the application for an adjudication.—*In re Joseph M. Hill*, vol. 10, p. 133.

XXIV. *Railroad.***56. Where Road Built and Maintained.**

A railroad company incorporated by the laws of a State for constructing, maintaining and operating a railroad, cannot be proceeded against in bankruptcy in a District Court without the State or States where its railroad is to be built, maintained and operated, on the petition of a creditor charging an act of bankruptcy. Allegation and proof that such company kept an office in said district for six months next preceding the filing of the petition, where its officers acted, its board of directors met, and where it contracted debts, made loans, purchases and payments, does not give such court jurisdiction.

The business of a railroad company, in the sense of the act, can only be carried on where the railroad is or is to be constructed, maintained and operated; hence, the District Court of the United States for the Southern District of New York has no jurisdiction to adjudge an Alabama railroad corporation a bankrupt on such a petition by a creditor.—*In re Alabama and Chattanooga R. R. Co.*, vol. 6, p. 107.

**57. Principal Office.**

Upon a petition in bankruptcy against the Boston, Hartford, & Erie Railroad Company, it appears that the company owned a railroad situated partly in Connecticut, and partly in Massachusetts; that a company by that name was first chartered by Connecticut, with power to purchase and complete any railroads running through parts of both States, on the line between Boston and Hartford, that such purchases were made; that subsequently, the Boston, Hartford, & Erie Railroad Company was, by an act of the Massachusetts Legislature, declared to be a corporation within that State; and that the road in both States was owned by the same stockholders, conducted by the same directors, and subject to the same debts, in the same manner as if it were wholly within one State.

*Held*, That whether this company was one corporation or two corporations chartered by different States, but united, and having in all respects a common interest, or an anomalous body, not precisely an-

swering either of these descriptions, upon the filing of the creditors' petition in the District Court of the district where the principal office and place of business of the road was situated, that court acquired exclusive jurisdiction over proceedings in bankruptcy against it, which could not be effected by a petition subsequently filed by another creditor in another district.—*In re Boston, Hartford, & Erie Railroad Company*, vol. 6, p. 209.

**58. Receiver of State Court first in Possession.**

On review of a motion in the United States court to appoint a receiver to take possession of the property of a corporation already ordered to be delivered to a receiver appointed by a State court,

*Held*, That the jurisdiction of the two courts was concurrent; that the jurisdiction of the State court was first invoked and asserted, consequently no court of concurrent jurisdiction can or ought to interfere with it. Motion continued, to allow the defendants to set up the facts in regard to the proceedings of the Chancery court of Sumter county by formal answer.—*Blake v. The Alabama & Chattanooga R. R. Co. et al.*, vol. 6, p. 331.

XXV. *Receiver.***59. Prior Possession by—does not Oust Jurisdiction Bankrupt Court.**

Objection to the exercise of jurisdiction by Bankruptcy Court, founded upon the prior proceedings in the State court against the corporation and its property, and the consequent taking of possession of all the alleged bankrupt's estate under such proceedings before the petition in this case was filed, and under which proceedings it is insisted that the State court has now the exclusive right to administer the estate of the alleged bankrupt, overruled.—*In re Safe Deposit & Savings Institution*, vol. 7, p. 893.

XXVI. *Residence.***60. In Different District of Same State.**

A petition in bankruptcy filed in the Southern District against a debtor who resides and carries on business in the Northern District of New York, will be dis-

missed for want of jurisdiction.—*Palmer*, vol. 1, p. 213.

#### 61. Non Resident Partner.

A petition was filed by two parties, one of whom neither resided nor carried on business in the District where the petition was filed.

*Held*, That such partner must file his petition where he resided. — *Francis T. & Wm. C. Prankard*, vol. 1, p. 297.

#### 62. Clerk Doing Business in District.

One M., formerly in business for himself in Chicago, had been employed a year and over as a book-keeper in New York city, and lived with his father at Elizabeth, New Jersey.

*Held*, On a voluntary petition to be declared a bankrupt in Southern District of New York, that this court had no jurisdiction.—*In re William H. Magie*, vol. 1, p. 522.

#### 63. Contra.

Where petitioner in bankruptcy had carried on business and resided in New York for twenty years prior to June, 1866, and removed to New Jersey that year, but was still engaged as a clerk with his successors in business,

*Held*, That this petition was properly filed in the District Court for the Southern District of New York.—*Belcher*, vol. 1, p. 666.

#### 64. Discharge Refused.

A discharge will be refused for want of jurisdiction where the testimony shows that the bankrupt did not reside or carry on business within the meaning of the act, in the district where the petition was filed for the six months next immediately preceding the time of filing or for the longest period during such six months, although he removed to that district more than a month before the commencement of proceedings.—*In re Leighton*, vol. 5, p. 95.

#### 65. Of Assignee in Bankruptcy.

The assignee residing in another State, and the matter in dispute exceeding five hundred dollars, the suit being between the citizens of two different States, a bill in equity for the recovery of property against the bankrupt, his wife, and a third party, has all the conditions necessary to give the Circuit Court jurisdiction.—*Spaulding v. McGovern et al.*, vol. 10, p. 188.

#### 66. Partnership.

A. filed a petition to have the firm of D.

& Co. adjudged bankrupts, alleging, as an act of bankruptcy, that two notes executed by the firm at Cincinnati, Ohio, had remained unpaid for more than fourteen days.

The members of the firm plead separately to the jurisdiction of the court, alleging that the domicile and only place of business of the firm was in the district of Michigan, and that they had no location, domicile or place of business in the Southern District of Ohio. It was proved that one of the partners resided in the Southern District of Ohio.

*Held*, That the only court having jurisdiction was the United States District Court of Michigan.—*Cameron v. Canio & Co.*, vol. 9, p. 527.

### XXVII. State.

#### 67. No Jurisdiction in U. S. Court when State a Party.

The Circuit courts of the United States have no jurisdiction of a case either at law or in equity, in which a State is plaintiff against its own citizens. The constitution of the United States does not confer such jurisdiction, nor is it conferred by any act of Congress. Such jurisdiction is not conferred upon the Circuit Court in this case by the Bankruptcy Act of 1867, because there are other necessary parties than the assignee in bankruptcy, and without such parties the plaintiff could not sustain his suit in any court.—*State of North Carolina v. Trustees of University et al.*, vol. 5, p. 466.

### XXVIII. State Court.

#### 68. Not Divested by Mere Force of Adjudication.

The jurisdiction of the ordinary tribunals, over suits to which the bankrupt is a party, is not taken away by mere force of the adjudication; but the Bankruptcy Court has jurisdiction to suspend or control such proceedings by acting on the parties.

In the absence of such interference the jurisdiction of the State courts remains unimpaired, and their decrees and judgments are valid and effectual.—*In re Irwin Davis*, vol. 4, p. 716.

#### 69. Of Actions by Assignee not Precluded.

Section 2d of the present United States Bankrupt Act does not preclude a State Court from jurisdiction of an action by the



assignee on a cause which accrued to the bankrupt.—*Peiper v. Harmer*, vol. 5, p. 252.

#### 70. Contra.

Congress does not possess the power to require or compel the State tribunals to entertain suits in favor of an assignee for the collection of the assets of the bankrupt. The courts should not, therefore, construe the Bankrupt Act in such a manner as to necessitate assistance in its execution beyond the constitutional power of Congress to provide.—*Goodall v. Tuttle*, vol. 7, p. 193.

#### 71. Cannot Garnishee Funds of Assignee.

A and B were partners, and were sued individually on certain firm promissory notes by C.

B had become a non-resident of the State, and C caused an attachment to be issued against him.

A owed B money, but A had been declared a bankrupt by the United States District Court. C garnisheed the assignee in bankruptcy.

*Held*, That the State court had no jurisdiction, but that a receiver of B's effects should be appointed by the court, who would represent B in the bankruptcy distribution, and would receive from A's assignee all moneys coming to B, and then account to the State court for them.—*Jackson v. Miller et al.*, vol. 9, p. 143.

#### 72. Jurisdiction Divested except as to Specific Liens.

When the United States courts, under the Bankrupt Act of 1867, have acquired jurisdiction of the estate of a bankrupt, the State courts lose jurisdiction of all claims against him provable under the Bankrupt Act, except specific liens upon his property, and legal or equitable claims of title thereto; and the homestead and exemption provisions of the Constitution of 1868 of Georgia do not create such a specific lien upon or title to his estate in favor of his family, as may be heard and adjudicated by the State courts pending the proceedings in bankruptcy.

Whether said claim is such a debt in favor of the family as may be proven before the Bankrupt Court, independently of the exemption granted by the Bankrupt Law

to the bankrupts, it is for that court alone to decide.—*Woolfolk v. Murray, Bryan v. Sims*, vol. 10, p. 540.

#### 73. Cannot Review Decisions of United States Courts.

The State court cannot review the proceedings of the United States District Court.—*Maxwell v. McCune*, vol. 10, p. 806.

#### 74. After Discharge of Bankrupt.

The jurisdiction of the Bankrupt Court ceases with the granting of the discharge, and the plaintiff may then apply direct to the State court for relief.—*Wm. Penny v. A. H. Taylor*, vol. 10, p. 201.

#### 75. Not Exercised to Enforce Penalty.

The provisions in the Bankrupt Act in regard to preferences are penal in their character, and the courts of the State will not exert their jurisdiction to enforce them.—*Bingham v. Claflin et al.*, vol. 7, p. 412.

### XXIX. Summary.

#### 76. Waiver of Objection by Answer.

Where on a summary petition to set aside an alleged fraudulent transfer, the defendant appears and answers without objection as to the form of proceedings,

The court has jurisdiction of the parties in the case under Section 1 of the Bankrupt Act, no objection thereto having been made in the proper manner or at the proper time.—*Ulrich*, vol. 3, p. 133.

#### 77. Not Limited by Value of Property.

In summary proceedings there is nothing in the law to limit the jurisdiction of the Circuit Court, on review, to the value of the property in controversy.—*Samson, Assignee, v. Blake et al.*, vol. 6, p. 410.

#### 78. Cannot Examine Bankrupt after Discharge.

The summary jurisdiction of the Bankrupt Court over the bankrupt, ceases with the granting of his discharge.

In this case the Register, four years after discharge, issued an order requiring a bankrupt to submit to examination touching property claimed to have been fraudulently concealed. The court set the order aside for want of jurisdiction to grant it.—*Nathaniel Dole*, vol. 9, p. 193.



XXX. *Supreme Court.***79. No Appellate over the Supervisory Jurisdiction of Circuit Court.**

The Supreme Court has no appellate jurisdiction of decisions of the Circuit Court exercised in supervising the summary proceedings of the District Court, but only of the decisions of the Circuit Court in cases brought there originally and by writ of error or appeal from the District Court.—*Marshall v. Knox et al., Assignees*, vol. 8, p. 97.

**80. In Controversies where Matter in Dispute exceeds \$2,000.**

The jurisdiction intended to be conferred by the Bankrupt Act on the United States District and Circuit courts is the regular jurisdiction between party and party, as described in the 11th Section of the Judiciary Act and the third article of the Constitution, consequently it follows that final judgments in such civil actions, or final decrees in such suits in equity, rendered in cases where the matter in dispute exceeds, exclusive of costs, the sum of \$2,000, may be re-examined in the Supreme Court under the 22d Section of the Judiciary Act, when properly removed there by writ of error or appeal.

Cases arising under the third clause of the 2d Section of the Bankrupt Act, where the amount is sufficient, are plainly within the 9th Section of said Act, and as such, when the case has proceeded to final judgment or decree, may be removed for re-examination by writ of error or appeal.—*Coit v. Robinson & Chamberlin*, vol. 9, p. 289.

**81. Granting of Discharge.**

The review and revision contemplated by the first clause of the same Section is evidently the same in substance and effect as that given to the Circuit Court in the prior Bankrupt Act, from the fact that the jurisdiction extends to mere questions, as contradistinguished from judgments or decrees, and from the further fact that jurisdiction, in that behalf, may be exercised in chambers as well as in court, and in vacation as well as term-time. Mere questions are not re-examined under the regulation prescribed in those acts, nor would any judgment or decree be regarded as a regular final judgment unless it was rendered in term-time when the court was in session.

Whether the bankrupt is entitled to a discharge, pursuant to the 29th Section of the Bankrupt Act, is always a question to be decided by the District Court under the conditions prescribed in that section.

Creditors opposing the discharge may file a specification, in writing, of the grounds of their opposition, when the court is authorized, *in its discretion*, to postpone the question of fact, to be tried at a stated session of the court. The Bankrupt Act contains no provision for a jury trial on the question of discharge, and the only power vested in the Circuit Court to review and revise the decision of the District Court, made in granting or refusing such a discharge, is that conferred by the first clause of the 2d Section of that Act. Except when special provision is otherwise made, the Circuit courts have a general superintendence and jurisdiction of all cases and questions arising under the Bankrupt Act.—*Coit v. Robinson & Chamberlin*, vol. 9, p. 289.

XXXI. *Title.***82. Disputed between Strangers.**

The United States District Court has no jurisdiction over a petition filed by a creditor of the bankrupt, who claims the property by virtue of certain unrecorded mortgages and bills of sale of earlier date than that of a mortgage given to the wife of a bankrupt by a firm of which her husband was a member, to secure the payment of a promissory note given to her by the said firm.—*Barstow v. Peckham et al.*, vol. 5, p. 72.

XXXII. *Verification.***83. On Petition Insufficiently Verified.**

The court has jurisdiction when a petition is filed, notwithstanding the insufficiency of the verification, and therefore power to allow an amendment of it.—*In re Solomon Simmons*, vol. 10, p. 254.

## JURY TRIAL.

See ADJOURNMENT,  
ANSWER,  
BANKRUPT,  
DENIAL OF BANK-  
RUPTCY.

**1. Voluntary Petition. Insolvency not Denied.**

Bankrupt was a member of two copartnerships, and without notice to his other

copartners, filed his individual petition in voluntary bankruptcy, showing in his schedules assets and liabilities of the two firms. He was adjudicated a bankrupt individually, and assignees were appointed who petitioned that the court adjudge the two firms respectively bankrupt, as being insolvent, in order to the administration of their assets in the bankruptcy court.

The remaining copartners answered, denying the commission of any act of bankruptcy by either firm, and demanded a trial by jury.

*Held*, If the respondents denied the insolvency of the firms, jury trial would be granted; but not being denied, the said firms would be respectively adjudged bankrupt.—*Shumate & Blythe, Assignees, v. Hawthorne*, vol. 3, p. 228.

## 2. Is Waived by not Filing Demand on Return Day.

On the return day of a rule to show cause why the debtor should not be adjudged bankrupt, the debtor entered an appearance by his attorneys, and at their request a continuance was granted generally, they neither filing any plea, demurrer, answer or demand for a jury trial, or asking for further time in which to plead in either of these ways. On the day to which the case was continued, the debtor asked leave to file a general denial and demand for jury trial,

*Held*, He had waived his right by not filing it on the return day, or getting special leave to file at the adjourned day.—*Sherry*, vol. 8, p. 142.

## 3. Demand for, Need not be Verified or in Writing.

Neither the Bankrupt Law nor Form 61 requires that the answer to a creditor's petition to entitle the debtor to demand and have a hearing by the court, or a trial by jury should be verified or even in writing. It is sufficient if he appears before the court and allege that the facts set forth are not true. The better practice, however, is to put the whole answer in writing, and allege in express terms that the facts set forth in the petition are not true and then conclude with a demand for a hearing by the court, or a trial by jury.

It should be signed by the respondent in

person or by attorney—*In re Heydette*, vol. 8, p. 332.

## 4. "First Term." Special Venire.

That part of Section 41 of Bankrupt Act, providing that when a trial by jury is demanded in writing, the trial shall be "at the first term of the court at which a jury shall be in attendance," construed and held not to prevent the court from ordering a special jury, where the circumstances of the case require a trial sooner than when a jury would be in attendance in the course of regular terms of the court. In this case, as there was only one regular term in the year, it was ordered that a venire be issued for a jury to try the issue of bankruptcy, returnable on the first day of the next week.—*In re Hawkeye Smelting Co.*, vol. 8, p. 385.

## 5. On Question of Discharge.

The Bankrupt Act contains no provision for a jury trial on the question of discharge, except in discretion of court.—*Coit v. Robinson & Chamberlin*, vol. 9, p. 289.

## 6. Since Amendment, 1874, List of Creditors.

Where an involuntary petition was filed since December 1, 1873, and the alleged bankrupt has made denial of the acts of bankruptcy and demanded a jury trial, he will, under Section 39, as amended June 22, 1874, be required to file a list of his creditors, and the amount of their claims.—*Warren Savings Bank v. Palmer & Co.*, vol. 10, p. 239.

## KNOWLEDGE OF INSOLVENCY.

See AMENDMENT,  
ASSIGNEE,  
EVIDENCE.  
FRAUD,  
NOTICE,  
PREFERENCE,  
REASONABLE CAUSE.

## 1. When Judgment Entered, though not when Warrant Given.

Where a debtor, not being insolvent, borrowed money and gave bond with warrant of attorney to the creditor to confess judgment, and he took judgment with notice of subsequent bankruptcy and levy made,

*Held*, The judgment was good against and should be paid out of the assets in court

of the proceeds of sale of bankrupt's property.—*Wright*, vol. 2, p. 490.

**2. Client not Bound by Knowledge of Attorney.**

Knowledge of a debtor's insolvency is not to be presumed of a creditor because such knowledge is possessed by the attorney.—*Wright*, vol. 2, p. 490.

**3. Evidence of.**

Where the bankrupts had knowledge of facts sufficient to bring home to the minds of reasonable men knowledge of their insolvency, they (the bankrupts) must be held to have had that knowledge, and the mortgaging and transfer to a creditor, with knowledge of these facts, of their stock of goods is in fraud of the Bankrupt Act.—*Rison, etc., v. Knapp*, vol. 4, p. 349.

**4. When Debtor has Absconded.**

Where a creditor, who has been carrying and renewing a note, enters up judgment by virtue of a warrant of attorney attached, and issues execution, the debtor having, three days before, absconded, leaving his property and creditors unprotected, the business community and newspapers being in speculation as to his departure and means and the creditor having come to the conclusion that "there was something wrong," and that his interests as well as those of the surety on the note require that judgment should be entered, he obtains such a preference as is avoided by the 35th and 39th Sections of the Bankrupt Act.—*Golson v. Neihoff*, vol. 5, p. 56.

**5. At Time of Entering Judgment.**

If, at the time of the entry of judgment, the creditor has knowledge of his debtor's insolvency, or notice of such facts as make it reasonable to believe him insolvent, he is guilty of intending a fraud upon the Act. And where he thus executes the dominant power, such entering of judgment is an act of bankruptcy, participated in by the creditor, and all advantages obtained under it are in violation of the law.—*Golson v. Neihoff*, vol. 5, p. 56.

**6. Idem, though None when Warrant Given.**

It is not a sufficient answer to say that the warrant of attorney was given to secure a *bona fide* debt, and that at the time the creditor has no knowledge of his debtor's insolvency. The question depends upon

the knowledge or information which the creditor had at the time he made his warrant operative.—*Golson et al. v. Neihoff et al.*, vol. 5, p. 56.

**7. Payment of Excessive Discounts.**

The simple fact that a man doing a large business, pays under special circumstances a large discount for a loan, is not notice of insolvency to the creditor, it being shown that at the time similar commercial paper was selling at equally high rates.—*Golson v. Neihoff*, vol. 5, p. 56.

**8. Supposing all other Creditors Paid.**

When a debtor and a preferred creditor know of the insolvency, but erroneously suppose all other creditors have compromised for thirty-five cents in time paper, a transfer so securing the creditor as to create a preference financially is an act of bankruptcy. If insolvency is once known all parties act at their peril, when such condition actually exists, whether known or unknown.—*Curran et al. v. Munger et al.*, vol. 6, p. 83.

**9. Put upon Inquiry.**

Whatever fairly puts a party upon inquiry, when the means of knowledge are supposed to be at hand, if he omits to inquire he does so at his peril, and he is chargeable with a knowledge of all the facts which by a proper inquiry he might have ascertained.—*R. S. Hamlin v. W. C. Pettibone*, vol. 10, p. 172.

**10. "Cause to Believe."**

A creditor receiving payment with "cause to believe" his debtor insolvent, is presumed to *know* that such debtor thereby intended a fraud upon the Act.—*Brooke, etc., v. McCracken*, vol. 10, p. 461.

LACHES.

See DISCHARGE,  
EQUITY,  
JURISDICTION,  
JURY TRIAL.

**1. Application for Examination of Bankrupt.**

Where creditors applied for an order that bankrupts attend and submit to an examination under Section 26, and it appeared that ample opportunity had previously been given to so examine the bankrupts,

*Held*, That the application for examination after the expiration of time allowed to amend specifications was unreasonable. — *Isidor & Blumenthal*, vol. 1, p. 264.

## 2. In Objecting to Unauthorized Appearance of Attorney.

Where a person not authorized, appears as an attorney for an individual or corporation, in answer to a rule to show cause, and waives important rights of the alleged bankrupt, as admitting the allegations of the petition, the proceedings in bankruptcy may be set aside upon the application of such alleged bankrupt. But this motion must be made within a reasonable time after notice thereof, or it will be held waived, and the authority of the attorney, by such silence, ratified.

Where stockholders of an insolvent insurance company, under the above circumstances, wait six months — until several hundred thousand dollars of assets have been collected and is ready for distribution — and they are themselves sued for their *pro rata* of unpaid stock,

*Held*, They have been guilty of laches and will not be heard. — *Republic Insurance Company*, vol. 8, p. 317.

## 3. In Pleading Discharge.

Laches in making an application for leave to plead a discharge in bankruptcy is a sufficient ground for denying it. — *Medbury & Swan*, vol. 8, p. 537.

## LANDLORD.

See JURISDICTION,  
LEASE,  
RENT.

## 1. In Illinois when Distress not Issued prior to Filing Petition, no Lien.

That a fair construction of the Bankrupt Law upon the right of the landlord in the State of Illinois, is to vest in the assignee all the property of the bankrupt tenant upon which a distress warrant has been issued and levied prior to the granting of the certificate of the court to the officer, of the amount due from the tenant and entered of record. But analogous to the rule in the case of final process, where the right of the landlord has been exercised by issuing and levy of the warrant of distress, filing the copy of the warrant and inven-

tory of the goods before the proper court, and the obtaining the certificate of the amount found due, that becomes in the nature of a final process, where it is issued, and has a priority over the general creditors in bankruptcy.

That when no distress warrant has been issued prior to the filing of the petition in bankruptcy, the landlord has no priority or preference over the general creditors, and must prove his debt like any other general creditor of the bankrupt. — *Joslyn et al.*, vol. 3, p. 473.

## 2. In Pennsylvania, Idem.

Unless there is a seizure for rent, as provided for in the Pennsylvania statute, the Bankrupt Act of 1867 gives the landlord no lien or preference over the bankrupt's other creditors. — *H. L. Butler*, vol. 6, p. 501.

## 3. Premises Occupied by Marshal.

Upon the application of a landlord for an allowance for rent for the time during which his premises were occupied by the goods of the bankrupt while in the hands of the marshal, the court held that the landlord ought to have applied to the court for possession immediately after the marshal took control, and that it would have ordered a removal of the goods and furniture therefrom and the premises vacated. If the landlord had an opportunity to rent the premises, he should have so represented to the court. Application for payment of rent refused. — *In re McGrath & Hunt*, vol. 5, p. 254.

## LEASE.

See LANDLORD.

## 1. Obligation for Rent of Premises taken by Railroad Company.

Where premises under a lease are taken and condemned to the use of a railroad company, and damages are paid by the company to the tenant, upon the basis that his obligation to pay rent during the remainder of the term will continue, which obligation he expressly recognizes when he receives the money, and which he partly performs, the landlord, on the bankruptcy of the tenant, will be allowed to prove, as a claim against the estate, the amount of the unpaid installments of rent, at their

value at the date of the bankruptcy.—*In re John Clancy*, vol. 10, p. 215.

## 2. Assignment of, Protected.

A. made a lease for years of a certain hotel owned by him, and assigned and transferred this lease to a creditor to secure a debt due him.

Subsequently A. was adjudged a bankrupt.

*Held*, That the assignee in bankruptcy must take the estate subject to the lease, and that the law will recognize the assignment and protect the creditor as to his rights in the leased property.—*Daniel F. Meador et al. v. R. D. Everett, Assignee of L. H. Clark*, vol. 10, p. 421.

## LEGAL PROCESS.

See ACT OF BANKRUPTCY,  
JURISDICTION,  
RECEIVER,  
SUFFERING PROPERTY  
TO BE TAKEN.

### 1. Summons.

Summons may be furnished in blank to the Registers, signed and sealed by the clerk.—*In re John Bellamy*, vol. 1, p. 64.

### 2. Examination in Supplementary Proceedings.

An examination in supplementary proceedings under Section 292 of the Code of the State of New York is "legal process" within the meaning of Section 39 of the Bankrupt Act.—*Brock v. Hoppock*, vol. 2, p. 7.

### 3. Receiver under State Court, taking Property by.

The taking of property by a Receiver appointed by order of a State court, is a taking under legal process, within the meaning of Section 39 of the Bankruptcy Act.—*Hardy et al. v. Clark & Bininger*, vol. 3, p. 385.

### 4. Idem.

The taking of the property of insolvent traders, by a Receiver appointed by a State court, is a taking under legal process,

within the meaning of Section 39 of the Bankruptcy Act.—*Hardy, Blake & Co. v. Bininger*, vol. 4, p. 262.

## LEVY.

See EXECUTION.

### Without Going upon the Premises.

A levy made by a sheriff in Ohio by obtaining a description in person at the Recorder's Office of defendant's lands, and indorsing the fact of a levy, and a description of the lands, on the back of the execution, is a good levy, even though the sheriff never was on, near, or in sight of, said lands.—*Armstrong v. Rickey Bros.*, vol. 2, p. 478.

## LIABILITY.

See BANKRUPT,  
DISCHARGE,  
FIDUCIARY DEBT,  
NEW PROMISE.

### 1. Of Bankrupt after Discharge—Fraud.

Where a bankrupt contracted a debt through fraud he continues liable, notwithstanding his discharge. — *Wright & Peckham*, vol. 2, p. 41.

### 2. Idem.

A discharge in bankruptcy does not discharge a debt fraudulently contracted, and the question whether such discharge affects a debt can only arise and be determined between the parties in a suit prosecuted to collect the debt in which the discharge shall have been pleaded as a bar to recovery. The provisions of Section 21 relating to suits against the bankrupt, apply only to a debt which will be discharged by a discharge.—*In re John S. Wright*, vol. 2, p. 142.

### 3. Idem. Fiduciary Relation.

Where goods were sent to bankrupt to be sold on commission, and bankrupt, after selling, refused to account,

*Held*, That the debt being created by defalcation of bankrupt while acting in a fiduciary relation, was unaffected by discharge.—*In re Kimball*, vol. 2, p. 204.



**4. Of Indorser.**

Debts due by a firm were purchased, and payment made partly in notes indorsed by the firm. They were not all paid. The firm having been dissolved, one member filed his petition in bankruptcy, without filing the assent of any creditors to whom the firm was debtor, upon the indorsements.

*Held*, The taking the notes so indorsed, extinguished the original indebtedness. That, until protest and notice, liability upon indorsement is not a provable debt. That although the liability of an indorser from being contingent becomes fixed, it does not become the liability of a principal debtor until judgment has been obtained. That liability of an indorser, although fixed, is a secondary liability. That contingent liabilities specified in Section 19 cannot be regarded as those of a principal debtor within Section 33 until they have become fixed liabilities in contradistinction to contingent.—*Loder*, vol. 4, p. 190.

**5. Idem.**

An indorser of a note who receives none of the proceeds of the same, and whose contingent never becomes an absolute liability, cannot be compelled to pay to the bankrupt's assignee the amount of the note paid by the bankrupt to the holder, and while he, the debtor, was still carrying on business.—*Bean, Assignee, v. Laflin*, vol. 5, p. 333.

**6. Transferee of Warehouse Receipt—General Assignee.**

The assignee of B. brought suit against D. and E. to recover the value of certain personal property which had been disposed of by the defendants. Against D. the claim was made on the ground that he had received certain goods which were transferred to him by a warehouse receipt.

As against E. the claim was that, knowing the insolvency of B. he received, under general assignment to himself, all the remaining property of B.

The evidence showed that D. transferred the property in his possession under the warehouse receipt to E., as the general assignee.

*Held*, That D. was not liable as transferee of the warehouse receipt, but only

for money received from E., the assignee, as a preferred creditor.

That as E. was not a creditor of the bankrupt, and as he had distributed some of the property to the preferred creditors under the general assignment, before the commencement of proceedings in bankruptcy, he was not chargeable with the value of any property turned over to lawful creditors of the bankrupt, but was liable for the balance only which shall appear to be in his hands after a proper accounting with the assignee in bankruptcy.—*Jones, Assignee, v. Kinney & Wilson*, vol. 4, p. 650.

**7. Insurance Company.**

First insurers only paid eighty-five cents on the dollar of their liability; yet the court held the receiver of that company properly proved his debt against the estate of the company re-insuring, for the full amount of their liability.—*Republic Insurance Company*, vol. 8, p. 197.

**8. Assumption of Corporate Name.**

Where certain persons associated themselves together, assuming to be a corporation and using a corporate name without authority of law, they are individually liable as co-partners for the debts of the association; and a creditor who has dealt with them as a corporation, is not thereby estopped from setting up his claim against them individually.—*Mendenhall*, vol. 9, p. 497.

**LIEN.**

See ATTACHMENT,  
ATTORNEY,  
CONSTITUTIONALITY,  
ENCUMBERED PROPERTY,  
EXEMPTION,  
HOMESTEAD,  
JUDGMENT,  
MECHANIC'S LIEN,  
MORTGAGE,  
PARTNERS,  
RECORDING,  
RENT,  
SALE,  
SECURED CREDITOR.



## LIEN—

- I. *Acquired Within Four Months of Commencement of Proceedings*, p. 479.
- II. *After Commencement of Proceedings*, p. 479.
- III. *For Advances*, p. 479.
- IV. *By Attachment*, p. 479.
- V. *Of Bank*, p. 479.
- VI. *Character of Lien*, p. 480.
- VII. *For Costs and Fees*, p. 480.
- VIII. *Enforcement of*, p. 480.
- IX. *Where Exceeding Value of Property*, p. 481.
- X. *Exempted Property*, p. 481.
- XI. *Insurance*, p. 482.
- XII. *Judgment Creditor*, p. 482.
- XIII. *Jurisdiction*, p. 484.
- XIV. *Of Landlord*, p. 484.
- XV. *Maritime Liens*, p. 485.
- XVI. *Of Mechanic's and Material Men*, p. 485.
- XVII. *By Mortgage*, p. 486.
- XVIII. *Priority*, p. 486.
- XIX. *After Sale of Property*, p. 486.
- XX. *For Taxes*, p. 487.
- XXI. *Of Vendor*, p. 487.
- XXII. *Waiver of*, p. 487.
- XXIII. *When Lien Attaches*, p. 487.

# I. *Acquired within Four Months of Commencement of Proceedings.*

## 1. *Will not be Displaced.*

A lien obtained without aid of the bankrupt will not be displaced by subsequent proceedings in bankruptcy, though commenced within four months after levy of the execution, or rendition of the judgment.—*Wilson et al.*, vol. 9, p. 97.

## 2. *Idem.*

A lien obtained by a creditor within four months preceding the commencement of proceedings in bankruptcy, the debtor at the time being insolvent, and the creditor knowing this fact,

*Held*, Not to be contrary to the provisions of the Bankrupt Act, it not appearing affirmatively that the bankrupt assisted the creditor to obtain his lien.—*Britton, Assignee, v. Payen & Brennan*, vol. 9, p. 445.

# II. *After Commencement of Proceedings.*

## 3. *Cannot Attach.*

After the filing of a petition in bankruptcy no valid lien can be acquired upon property of the bankrupt by proceedings in a State court; and an assignee is not bound to go into a State court to defend such a suit, the action being a nullity as to him.—*Stuart, Assignee, v. Hines et al.*, vol. 6, p. 416.

## III. *For Advances.*

## 4. *Commission-Merchant.*

An agreement to make advances to the debtor to enable him to make a crop, on the contract or assurance that the crop when gathered should be consigned to the party advancing the money, is nothing more than the ordinary business between the commission merchant and planter, and does not create a lien on the crop in favor of the merchant.—*Allen & Co. v. Montgomery*, vol. 10, p. 503.

## IV. *By Attachment.*

## 5. *Sheriff's Fees.*

Where the proceedings of the sheriff under an attachment up to the commencement of proceedings in bankruptcy, were regular and valid, he has a lien on the property for his fees which accrued prior to such commencement, but to no greater extent.—*Housberger & Zibelin*, vol. 2, p. 92.

## 6. *Debts and Costs—Dissolution of Attachment.*

Under the statutes of Michigan an attaching-creditor acquires a lien upon the property attached, for both his debt and his costs; but those statutes make no provision for the retention of any lien for either, in case his attachment is dissolved, neither in favor of the plaintiff in the attachment, nor the officer who makes the levy, and no such provision is found in the Bankrupt Law.—*Ward*, vol. 9, p. 349.

## V. *Of Bank.*

## 7. *Upon Stockholder's Shares.*

A bank organized according to the provisions of the 35th Section of the National Currency Act, has, in order to prevent loss upon a debt previously contracted, a lien upon the share of an individual stockholder

and can apply the same as well to the payment of individual as partnership indebtedness.—*In re Edward Bigelow, David Bigelow & Nathan Kellogg, composing the firm of E. & D. Bigelow*, vol. 1, p. 667.

### 8. Upon Deposits.

A banker has no lien upon the moneys of a depositor for any separate debt which the depositor may be owing him, hence, any amount on deposit, in the name of the bankrupt, must go in as assets, and the banker must prove his debt and take his dividends with the other creditors.—*Warner et al.*, vol. 5, p. 414.

### 9. Idem, not Good as against Payee of Cheque.

In Illinois, the payee of a cheque by presentation at the bank where payable, is thereby vested with the equitable title to so much of the money of the drawer then in the bank as will be sufficient to pay the cheque.

The title to the money, so acquired, is superior to the banker's lien on maturing paper, and will pass to, and may be enforced by, the assignee in bankruptcy of the payee.—*Fourth National Bank of Chicago v. City National Bank of Grand Rapids, Michigan*, vol. 10, p. 44.

## VI. Character of Lien.

### 10. Must be Disclosed.

A creditor who has a lien, either specific or general, must disclose its particular character, that it may legally, and according to its priority, be ascertained and liquidated.—*In re Sampson D. Bridgman*, vol. 1, p. 312.

### 11. No Distinction in Kinds of.

The Bankrupt Law makes no distinction between the different kinds of lien. If the law of a State recognizes a lien in any form, it is respected in the Bankrupt Court according to its dignity.—*Meeks v. Whately*, vol. 10, p. 498.

## VII. For Costs and Fees.

### 12. Sheriff has Lien up to Commencement of Proceedings.

A sheriff by proceedings under an attachment, has a lien for his fees accruing prior to the commencement of proceedings in bankruptcy.—*Housberger & Zibelin*, vol. 2, p. 92.

### 13. Contra.

The sheriff has no lien for his costs upon a stock of goods attached by him when the attachment has been dissolved by the proceedings in bankruptcy; but the Bankrupt Court has power to authorize the assignee to pay such part of the costs as can be shown, or may be presumed, to have been beneficial to the estate.—*Fortune*, vol. 2, p. 662.

### 14. Expenses of Bankruptcy Proceeding.

Where a creditor had a valid lien on real estate of the bankrupt, and after proving the debt in bankruptcy, applied to have said lien satisfied from the proceeds of the sale of said estate by the assignee,

*Held*, That he was so entitled upon deducting therefrom the cost of proving the lien, and there was no prior claim on such proceeds to pay the fees, costs, and general expenses in bankruptcy.—*In re Hambright*, vol. 2, p. 498.

## VIII. Enforcement of.

### 15. May be Enforced, without Regard to Consequence. Doubtfulness of Title.

An unimpeached creditor's lien having, before the commencement of voluntary proceedings in bankruptcy, attached upon part of bankrupt's estate, no consideration of probable sacrifice of the subject of the lien under judicial proceedings for its enforcement in a State court, will induce a court of the United States to restrain, delay, or hinder the creditor from prosecuting them.

No equity of the general body of the bankrupt's creditors can be asserted for their common, equal benefit, on the mere ground of doubtfulness of his title to the subject of his lien and the danger of consequent sacrifice at a forced sale.—*Donaldson*, vol. 1, p. 181.

### 16. Creditor Protected.

Liens by the Bankrupt Law are held sacred, and the creditor is expressly protected by Sections 14, 15, and 20 of the Act.—*In re Hugh Campbell, Ex parte Creditors*, vol. 1, p. 165.

### 17. Contra, Restraining Enforcement.

The District Court has power to restrain the holder of a lien from proceeding in any

suit to enforce it.—*Iron Mountain Co. of Lake Champlain*, vol. 4, p. 645.

#### 18. Delay.

A fund having been recovered not in virtue of any right in the complainant personally, but in virtue of the rights of the bankrupt's creditors generally and in virtue of the clear legal right of all the creditors, under the Bankrupt Law, it must be distributed among them generally, and not given to one who has lain by and only asserted his special lien after recovery.—*White v. Jones, Assignee*, vol. 6, p. 175.

#### 19. Congress may Destroy All Remedies.

Congress has power to destroy any lien upon property of the bankrupt, whether created by contract, by statute, or by judgment. The power given it to destroy the principal, the contract *a fortiori*, includes the power to destroy all the incidents or remedies for the enforcement of the contract.—*In re Jordan*, vol. 8, p. 180.

#### 20. Idem.

Congress has power to destroy existing contracts, and to release liens held for their enforcement.—*In re Smith*, vol. 8, p. 401.

#### 21. Bankrupt Court Respects any Lien Recognized by State Law.

The Bankrupt Law makes no distinction between the different kinds of lien. If the law of the State recognizes a lien by judgment, or in favor of a mechanic, or by mortgage, or in any other form, each is respected in the Bankrupt Court according to its dignity. Wherever the creditor has the legal right to have a debt satisfied from the proceeds of property, or before the property can be otherwise disposed of, it is a lien on such property for the security of the debt.—*Meeks v. Whately*, vol. 10, p. 498.

#### 22. After Bankrupt's Discharge.

The bankrupt's final certificate discharges his person and future acquisitions; but the lien creditor is entitled to satisfaction out of the property subject to lien.—*Hugh Campbell*, vol. 1, p. 165.

#### 23. Idem.

A creditor may take a decree *in rem* against property on which he has a lien, notwithstanding his debtor has been dis-

charged as a bankrupt.—*Stoddard v. Locke et al.*, vol. 9, p. 71.

#### 24. Idem, Enforcement Denied.

Where a bankrupt has filed his petition in bankruptcy, and in due course obtained a final discharge, certain creditors subsequently filed petitions, and insisted before the Register that he should grant orders compelling the assignee to sell and convey certain property which had passed out of bankrupt's hands, and over which he had no control, to satisfy judgments which they had obtained against bankrupt, but which Register refused to entertain,

*Held*, The liens did not exist; but if they did, it was not competent for the creditors to enforce them after the bankrupt had been discharged. The Register was right in his conclusions, and they are ratified and confirmed by the court.—*Dean*, vol. 8, p. 769.

#### IX. Where Exceeding Value of Property.

#### 25. Bankrupt Court will Use its Power to Take Possession of Property.

A Court of Bankruptcy has the power to take possession of the property of the bankrupt, subject to valid liens exceeding the value of the property, and to dispose of it for the purpose of satisfying, as far as possible, these liens. But, as a matter of discretion, under such circumstances, the power ought never to be exercised.—*Dillard*, vol. 9, p. 8.

#### 26. Conveyance to Lien Holder.

A conveyance by an insolvent debtor to his creditor, of property upon which said creditor has a lien to a greater amount than the value thereof, is not void as being within the perview of the first clause of Section 35 of the Bankrupt Act.—*Catlin v. Hoffman*, vol. 9, p. 342.

#### X. Exempted Property.

#### 27. May set Apart out of Property on which there are Liens.

In setting apart for the use of the bankrupt exempt property, the assignee is not obliged to designate articles on which there is no lien.—*Preston*, vol. 6, p. 545.

#### 28. Valid Against Liens.

The amendment of the Bankrupt Act of March 3, 1873, in respect to exempt prop-

erty is constitutional, and the exemptions allowed by that amendment are valid against debts of the bankrupt, without regard to the time when contracted, whether before or after the amendment, and also against liens by judgment or decree of any State court.—*In re Willis A. Jordan*, vol. 10, p. 427.

### XI. Insurance.

#### 29. Proceeds of Insurance under Covenant to Insure.

A creditor who has his debt secured by a valid trust deed containing a covenant to insure the buildings erected on the property to their full insurable value, has a clear and specific lien upon the proceeds of the insurance, to the exclusion of the general creditors in case of a loss by fire. The fact that the policies were not regularly assigned makes no difference, as in equity the assignment is executed the moment the insurance is effected; nor is the case altered on account of the clause in the said deed allowing the insurance company to be selected by the party loaning the money, because an insurance having been effected to the insurable value of the property the creditor has no power to insure further.—*In re Sands Ale Brewing Co.*, vol. 6, p. 101.

### XII. Of Judgment Creditor.

#### 30. By Execution and Levy.

Judgment was obtained in State court and execution issued thereon, and levy made by sheriff on debtor's property before he filed petition in bankruptcy.

*Held*, That the lien of the judgment creditors was good, and was not disturbed by the filing of said petition.

The Bankruptcy Court has power in such case to allow the goods to be sold under the execution, or to enjoin proceedings thereunder, and to order the assignee to take possession and sell the goods, with leave to the judgment creditors to apply for an order to have their liens satisfied out of the proceeds.—*Schnept*, vol. 1, p. 190.

#### 31. Idem.

Judgment was recovered, execution issued, and levy made by sheriff on the debtor's goods previously attached at the commencement of the suit. Debtor was subsequently adjudicated a bankrupt on petition

of creditors, and proceedings of the sheriff were stayed in the premises, but the injunction was afterwards modified to authorize him to sell the goods and hold proceeds subject to the order of the District Court.

*Held*, That the lien of the judgment creditors was good, and that the sheriff should apply the proceeds in satisfaction of the judgment, including his fees and charges therein, and pay the overplus, if any, to the bankrupt's estate.—*In re Henry Bernstein*, vol. 1, p. 199.

#### 32. Idem, Docketed Judgment.

Before a voluntary petition was filed, execution issued on a docketed judgment came into the hands of the sheriff who had levied on and held personal property of bankrupt under a prior execution.

*Held*, That liens against the real estate by the New York law, were perfected in both cases within the saving clauses of Sections 14 and 20 of the Bankrupt Act, and that the sheriff should be allowed to sell the personal property to satisfy the executions, and any deficiency would constitute a lien on the real estate, to be discharged on application to the court.—*In re John P. Smith & James Smith*, vol. 1, p. 599.

#### 33. Idem, without Knowledge of Insolvency.

Creditors taking out executions against the property of their judgment debtors, not having reasonable cause to believe them insolvent at the time, obtain a valid lien upon the property thus levied upon as against the assignee in bankruptcy, and when invalid levies are set aside, they come into full operation.—*Black v. Secor*, vol. 2, p. 171.

#### 34. Idem.

That rights acquired by judgment creditors, by levy prior to petition filed, must be preserved to them.—*Wilbur*, vol. 3, p. 276.

#### 35. Idem, upon Property under an Attachment afterwards Discharged.

A debtor's property was seized by the sheriff by virtue of an attachment issued out of a State court. After the levy of the attachment, two suits were commenced in a State court, judgment obtained, execution issued and delivered to the sheriff. After such levy the debtor filed his petition and was duly adjudged a bankrupt.

The judgment creditors moved for an order directing the payment of the judgments in full, on the ground that, by the Bankrupt Act, the attachment was discharged, and there having been a *bona fide* levy under the executions before the filing of the petition, the lien of the executions is saved by the Act.

*Held*, That the provisions of the Act do not indicate any intention to improve the condition of any creditor, or create new rights.

That, in the present case, all the right which the judgment creditor acquired, was by a levy on property already subject to an attachment to its full value. Such a levy gave the judgment creditor no security, and does not entitle him to apply to this court for payment of his judgment in full—*In re Klancke*, vol. 4, p. 648.

### 36. *Idem*, Foreclosure.

A sheriff who levies upon property by virtue of an order to sell under a mortgage foreclosure suit, before the debtor is adjudicated a bankrupt, has a valid lien and may sell the property after the adjudication. Injunction to restrain purchaser from meddling with the property refused, but leave given the assignee to redeem it within three months if he thinks it worth more than the mortgage debt, interest, and costs.—*Goddard, Assignee, v. Weater*, vol. 6, p. 440

### 37. *Idem*.

The United States District Court has no authority to order property to be taken out of the hands of the sheriff who holds the same by virtue of an execution issued upon a judgment obtained in a State court, and the lien under the execution is *prima facie* valid. Therefore, until the writ is set aside on account of fraud, or for the reason that it is in violation of the Bankrupt Law, the assignee has no right to immediate possession of any of the property seized before the judgment is satisfied.—*Shuey*, vol. 9, p. 526.

Creditors on a promissory note had judgment docketed, prior to proceedings in bankruptcy, against four bankrupts, as joint debtors, and sought to have it paid out of the proceeds of certain real estate in New York, purchased originally with partnership funds of J. A. and J. N. H., two of

said joint debtors, and the legal title of which was in N. J. H., who, however, had not been served with process, nor appeared in said cause, and against whom there was no judgment on which his individual property could be sold.

*Held*, Said creditors had no valid lien at law on said real estate, nor had they a valid equitable lien on the equitable interest of the partner J. A., by virtue of said judgment.—*Hinds*, vol. 3, p. 351.

### 38. Claim in Judgment.

In the distribution of the assets of the bankrupt derived from the collection of a promissory note, a creditor whose claim is in judgment has no priority, and will share *pro rata* with other creditors.—*Hardee*, vol. 3, p. 580.

### 39. Judgment Recorded after a Subsequent Mortgage.

A lien, by virtue of a judgment, will be postponed to a mortgage lien acquired subsequently, but recorded first.—*Lacy*, vol. 4, p. 62.

### 40. Delay in Entry on Execution.

Creditor had judgment in Georgia against bankrupt in 1858, and sought to prove his claim in bankruptcy.

*Held*, He was entitled to no priority on account thereof, no entry having been made on the execution for seven consecutive years subsequent to October 4th, 1860, and he had no lien by the laws of Georgia. The Bankrupt Law recognizes as liens only those that are valid and binding in the State where the property is situated.—*Cozart*, vol. 3, p. 508.

### 41. Deferring Levy.

A direction by the execution creditor to the sheriff "to hold the execution, but not to levy for a few days, or until further orders," does not impair the lien.—*In re Weeks*, vol. 4, p. 364.

### 42. Not a Vested Right.

A lien by judgment does not create any vested right in the property subject to such lien.—*Jordan*, vol. 8, p. 180.

### 43. Undue Claim.

Where a creditor obtained judgment for a debt not yet payable and thereby obtained a lien by levy on the goods of the debtor,

*Held*, The lien was invalid against the



assignee in bankruptcy of the debtor, though the circumstances did not prove a statute preference.—*Partridge v. Dearborn et al.*, vol. 9, p. 474.

### XIII. Jurisdiction.

#### 44. Not Exclusive.

Jurisdiction of U. S. District Court to sell real estate to pay off liens, is not exclusive.—*Bowie*, vol. 1, p. 628.

#### 45. Before Proof of Debt.

Chattel mortgagee petitioned to have his mortgage declared a valid and subsisting lien on property of bankrupts, and that the assignee be ordered to surrender to him the mortgaged property. Assignee objected to the jurisdiction of the Bankruptcy Court until the mortgagee should prove his debt against the estate.

*Held*, The District Court has concurrent jurisdiction with other tribunals to hear and determine the question of lien in the premises.—*High & Hubbard*, vol. 3, p. 192.

#### 46. Liquidation of Lien—Restrains Lienholder.

The District Court in bankruptcy has power to take the administration of the entire estate and ascertain and liquidate liens thereon, and to restrain the holder of a mortgage or other lien, from proceeding in any suit to enforce such lien.—*Iron Mountain Company of Lake Champlain*, vol. 4, p. 645.

### XIV. Of Landlord.

#### 47. Rent Payable in a Product Generally, not a Lien on any Specific Portion.

A debtor promised in writing to deliver six thousand four hundred pounds of cotton to pay for rent, and for mules, corn, and fodder bought from landlord. The debtor assigned cotton and farm-stock to his brother to pay just debts, with his own and brother's knowledge of his insolvency, and subsequently was adjudged a bankrupt.

*Held*, Landlord could not distrain under the statutes of Mississippi, and had no lien on cotton raised as against general creditors.—*Brock v. Terrell*, vol. 2, p. 648.

#### 48. Trade Fixtures.

A stipulation in a lease that the premises should be occupied as a boot and shoe shop, and that all fixtures of every description

should be put in by the lessee, and might be removed by him at the end of the term, provided he should have kept all his covenants, and not otherwise, and should not be removed during the term without the consent of the lessor, does not purport to give the lessor a lien on the mere furniture, though it should be fitted to the shop, if not annexed to the freehold.

It seems, that if such a stipulation did include furniture, it would not be valid against an assignee in bankruptcy, before entry and possession taken by the lessor.

Such a stipulation creates a valid lien on trade fixtures annexed to the freehold, and the assignee can take them only on payment of the arrears of rent.—*Ex parte J. H. Morrow—In re J. B. Young*, vol. 2, p. 665.

#### 49. Assignee takes Title subject to Landlord's Claim.

Where, under State laws, the landlord has a lien for rent, the same will be upheld and respected in a Bankruptcy court, and the assignee must take title subject thereto. The landlord will be entitled to prove his claim in bankruptcy for the unexpired term of a lease beyond one year, even though he has been preferred under a State law, for his rent up to the end of the year.—*Wynne*, vol. 4, p. 28.

#### 50. Claim good against Execution and other Creditors.

A landlord has a lien in the State of South Carolina on the personal property of the tenant, which is good for one year as against execution and other creditors.

Under the Statute of Anne, a landlord has a secured lien for his rent in the State of South Carolina, and that law is still in force, not having been repealed by the military order of General Sickles.

An assignee in bankruptcy is bound to respect the landlord's lien for suit.—*Trim et al. v. Wagner et al.*, vol. 5, p. 23.

#### 51. Failure to take Necessary Steps to Secure the Lien.

Unless there is a seizure for rent as provided for in the Pennsylvania Statute, the Bankrupt Act of 1867 gives the landlord no lien or preference over the bankrupt's other creditors.—*Butler*, vol. 6, p. 501.

#### 52. Idem.

A landlord claimed a preference for rent



of a plantation, leased by him to the bankrupt, upon which plantation it was alleged there was remaining, at the time of the adjudication of bankruptcy, property more than sufficient to pay the rent due, which property was sold by the assignee.

*Held*, That the petitioner having failed to take the necessary steps to secure his lien on the property for the rent due, had no prior claim in the fund in the hands of the assignee, and that he must share *pro rata* with the general creditors.—*Austin v. O'Rie'ly, Assignee*, vol. 8, p. 129.

### 53. Idem. Failure to Record Lease.

A landlord petitioned to have his rent paid in full out of the proceeds of certain property of the bankrupt, on which he claimed a lien by the peculiar terms of his lease.

*Held*, That he had no lien because the lease was not recorded, as required by the Statute of Michigan, and petition must be dismissed, but without costs to either party.—*Dyke & Marr*, vol. 9, p. 430.

### 54. Idem. Rent must be Intercepted before it Reaches Assignee.

Where an assignee in bankruptcy receives the rents of mortgaged property, it must be distributed among the general creditors of the bankrupt. If the mortgagee desires it to be applied specifically to his lien, he must not only show the insufficiency of his security without the pernaney of the rents and profits, but he must also intercept the rent before it can reach the assignee.—*Foster v. Rhodes*, vol. 10, p. 523.

## XV. Maritime Liens.

### 55. Not Recognized in Bankrupt Court, Vessels Navigating the Lakes.

A Bankrupt Court will recognize and give effect to all liens, whether National or State, except maritime liens, according to their priority of dates.

Under the Act of Congress of February, 1845, liens created by State statutes on vessels navigating the lakes were treated as *quasi* maritime liens.

By virtue of the late decision in the case of the tug, *Eagle*, in the Supreme Court of the United States, and the prior decisions in 4 Wallace, they can no longer be treated

as partaking of the character of maritime liens.

In the Bankrupt Court, mortgages on vessels, recorded under the Act of Congress of July, 1850, in the office of the Collector of Customs, in the home port, of a prior date, shall receive a preference over the domestic claims.—*Scott*, vol. 3, p. 742.

### 56. Home Port.

No maritime lien arises for materials furnished, or repairs made to a vessel in her home port, although such vessel is engaged in foreign trade; hence, neither the shipright nor material man is entitled to share in the proceeds arising from the sale of the vessel under admiralty process as against a mortgagee or assignee in bankruptcy. The Act of April 24th, 1862, of New York [Laws of 1862, chap. 482], is unconstitutional and void, so far as it provides for enforcing a maritime contract by proceedings *in rem* against a vessel.—*In re Ship Edith*, vol. 6, p. 449.

## XVI. Of Mechanics and Material Men.

### 57. Claim Filed after Petition in Bankruptcy.

Debtor filed petition in bankruptcy on May 17, 1869, and was thereupon adjudicated bankrupt. On May 29, 1869, claim was for the first time filed under the laws of New Jersey, in respect to Mechanics' liens on certain real estate, factory buildings, and fixed machinery in said State, belonging to bankrupt, the work having been done and materials furnished, whereon the liens were founded, prior to the filing of petition in bankruptcy.

*Held*, That such liens can be respected and allowed by the Bankruptcy Act only in case they were valid at the time of petition filed in bankruptcy.—*Dey*, vol. 3, p. 305.

### 58. Not Opposed to Policy of the Act.

The lien given by the local act to mechanics or material men is not opposed to the terms or policy of the Bankrupt Act, as it in no way prefers one creditor at the expense of another or diminishes the general assets of the debtor otherwise applicable to the payment of his general creditors.—*Coulter*, vol. 5, p. 64.

XVII. *By Mortgage.***59. Executed Subsequently, but Recorded Prior to Judgment.**

Where a creditor claims a lien by virtue of a judgment against the bankrupt, recovered on 5th November, 1866, but which was not recorded in the clerk's office until 16th October, 1867, and another creditor holds a mortgage executed by bankrupt, and recorded 7th April, 1867, the mortgage lien has priority over the judgment.—*In re W. Y. Lacy*, vol. 4, p. 62.

**60. Remaining in Possession.**

Where the mortgagor remained in possession of his stock of goods, the property mortgaged, and continued with consent of the mortgagee to make sales therefrom, the mortgage does not constitute a lien—*Second National Bank of Leavenworth et al. v. Hunt, Assignee*, vol. 4, p. 616.

**61. Recording Necessary.**

A mortgagee of a chattel mortgage loses his lien if he neglects to have it acknowledged and recorded as required by the State statute.—*Harvey, etc., v. Crane*, vol. 5, p. 218.

**62. How Created.**

A lien by way of mortgage can only be created by a deed under seal.—*In re St. Helen's Mill Co.*, vol. 10, p. 414.

XVIII. *Priority between Liens.***63. A Prior Lien.**

A prior lien gives a prior claim, and the District Court may ascertain and liquidate such a lien.—*In re Elijah E. Winn*, vol. 1, p. 499.

**64. Recording.**

A judgment recovered prior to the execution of a mortgage, but not recorded till subsequent thereto loses its priority over the mortgage.—*Lacy*, vol. 4, p. 62.

XIX. *After Sale of Property.***65. Transfer of Lien to Fund in Court.**

Where property incumbered by lien is sold, the purchaser takes it unincumbered, the lien being transferred from the property to the fund.—*In re Salmons*, vol. 2, p. 56.

**66. Idem. Discretionary to Sell Subject to or Free from Incumbrance.**

That under Sections 1 and 20 of the

Bankrupt Act the court has the right, through its officers, to take possession of all mortgaged property free of the lien of the mortgage, without first satisfying that lien, but in such case the lien is transferred to the fund in court.

It is a matter of discretion with the court to sell subject to, or free of the liens or incumbrances.—*Kahley et al.*, vol. 4, p. 378.

**67. Omission of Lien-holder's Name from Proceedings.**

Where an assignee in bankruptcy applied to the United States District Court for leave to sell the bankrupt's real property, subject to certain specified liens, and an order was made accordingly, and after the sale the assignee reported to the court that he had sold the property free from all other liens except those named,

*Held*, That the lien of a *bona fide* judgment creditor, who was not named in any of the proceedings, was not destroyed, for the reason that the said court did not ratify such sale as "free from all liens except those mentioned," although confirming the report made by the assignee.—*McGilton et al.*, vol. 7, p. 294.

**68. Sale free from Incumbrance.**

The Circuit Court will entertain a bill by an assignee in bankruptcy against several mortgagors and other lien-holders to ascertain the amount due, and sell all the property free from incumbrances.—*Sutherland et al., etc., v. Lake Superior Ship Canal Co. et al.*, vol. 9, p. 299.

**69. Idem.**

A court of equity may sell mortgaged premises free from incumbrances, remitting the lien-holders to the proceeds at the suits of subsequent incumbrances or other parties having right in the equity of redemption. The power in this regard, so frequently exercised in bankruptcy, is but an application there of this principle.—*Sutherland et al., etc., v. Lake Superior Ship Canal Co. et al.*, vol. 9, p. 299.

**70. Property Remains Subject to Incumbrance.**

Where property is incumbered, it will be taken for granted that the assignee sold subject to incumbrances, but the lien creditor or creditors must be notified before the sale takes place.—*Meeks v. Whately*, vol. 10, p. 498.

XX. *For Taxes.***71. Lien Follows Property after Sale.**

The Bankrupt Law can neither compel a State to come in to prove its claim, nor sell the property so subject free from the lien of the taxes.—*Stokes v. State of Georgia*, vol. 9, p. 191.

**72. Not Affected by Sale unless Revenue Officer made a Party.**

If a sale of property was made without the order of the court, it was subject to the lien of the taxes; if made under a judicial decree, it did not affect the lien unless the revenue officer or some proper representative of the same were made a party to that application.—*Meeks v. Whately*, vol. 10, p. 498.

XXI. *Of Vendor.***73. For Purchase Money.**

The lien of a vendor upon land, for the purchase-money, does not pass to the transferee of note taken in part payment.—*In re Brooks*, vol. 2, p. 466.

**74. Not Discharged by Taking Mortgage.**

The vendor's equitable lien upon land sold is not discharged by the subsequent taking of a mortgage upon the same land, and takes precedence over a judgment-lien obtained prior to the said mortgage.—*Bryan*, vol. 3, p. 110.

XXII. *Waiver of.***75. Taking Mortgage.**

Where a mortgage was given by bankrupt on five bales of cotton, while a lien existed on three hundred and twenty acres of land in favor of mortgagee, which Register claimed was a waiver of the prior lien,

*Held*, The Register was in error. The lien on the land was not waived nor in any way affected by the mortgage on the cotton. The creditor has a valid, subsisting lien upon said three hundred and twenty acres of land; and that the opposition of bankrupt thereto be overruled. The assignee is ordered to sell said land according to law, to satisfy said lien.—*Hutto*, vol. 3, p. 787.

**76. Failure to Refer to Lien in Petition.**

A creditor who has a lien by virtue of a judgment, etc., filing a petition for adjudi-

cation of bankruptcy without reference to his lien, waives and relinquishes it, and stands as an unsecured creditor.—*Bloss*, vol. 4, p. 147.

**77. Surrendering Possession.**

A party who has a lien for pasturing stock, by the statute of the State, waives and abandons such lien by voluntarily surrendering up the possession of the property and allowing it to be sold without claiming any lien thereon at the time. The estate of the bankrupt, however, is liable for the keeping of the stock from the commencement of bankruptcy proceedings up to the date of its surrender.—*In re Mitchell*, vol. 8, p. 47.

**78. Idem.**

H., the bankrupt, was indebted to R. for rent of store and otherwise, and, in order to secure the debt, gave R. an absolute bill of sale of a silver cornet, which musical instrument he delivered to R., telling him he could hold it as long as he stayed on the premises, and until the rent was paid. Subsequently H. borrowed the cornet to use, and agreed to return it after using it, but had the exclusive possession of it several months before he went into bankruptcy.

On petition of R. to have his lien upon the cornet enforced, etc.,

*Held*, That he had waived and surrendered whatever right he might otherwise have had under the bill of sale; that the transaction was a pledge and not a mortgage.—*In re Harlow*, vol. 10, p. 280.

XXIII. *When the Lien Attaches.***79. Creditor's Bill in Equity.**

The lien acquired by the commencement of a creditor's suit to reach equitable interest and things in action, should not be regarded as attaching by the mere commencement of the suit, but only when judgment is obtained; otherwise a creditor claiming such a lien under proceedings commenced before the enactment of the national Bankrupt Law, must disclose such proceedings and lien in proving his claim in a court of Bankruptcy, and if he do not, he thereby waives the lien.—*Alexander Stewart v. Siegfried Isidor, et al.*; vol. 1, p. 485.

**80. Writ of Fi. Fa.**

The issuing of a writ of *fi. facias* upon

a judgment recorded against the defendant in 1861, does not create such a lien upon the real estate of the defendant as will be respected and enforced by the Bankruptcy Court when the defendant has been subsequently declared a bankrupt.—*In re McIntosh*, vol. 2, p. 506.

### LIFE INSURANCE.

See INSURANCE.

### LIMITATION.

See ATTACHMENT,  
FOUR AND SIX MONTHS,  
INVOLUNTARY BANK-  
RUPTCY,  
SUITS BY AND AGAINST  
ASSIGNEE,  
TWO YEARS.

#### 1. Four and Six Months.

Execution being levied a few days over one month before proceedings in bankruptcy were commenced against the debtors, the limitations of the 35th and 39th Sections of the Bankrupt Act do not apply.—*Terry & Cleaver*, vol. 4, p. 126.

#### 2. Idem, Applies only to Payments, etc., Otherwise Valid under State Laws.

A payment made by a debtor who is in insolvent circumstances more than four months before the filing of the petition in bankruptcy by or against him, although made to the creditor by way of preference, will be sustained as against the assignee, under the provisions of the first clause of Section 35 of the Bankrupt Act. The limitation of four and six months, in Section 35, are limitations upon payments and conveyances which are otherwise valid under the common or statute laws of the States. In a suit by the assignee to recover of a creditor money paid by the bankrupt by way of preference, the declaration must allege that the payment was made within four months before the filing of the petition in bankruptcy or it will be bad on demurrer.

The first subdivision of Section 35 of the Bankrupt Act, with its limitation of four months, applies only to cases of payments or conveyances made to a creditor in consideration of pre-existing debts by way of preference. The provisions of Section 39

avoiding certain Acts are subject to the limitations of four and six months contained in Section 35.—*Bean, Assignee, v. Brookmire & Rankin*, vol. 4, p. 196.

#### 3. Idem.

The limitation of six months refers only to those transfers which are rendered void by the Bankrupt Act alone.—*Hyde, Assignee, v. Sontag & Eldridge*, vol. 8, p. 225.

#### 4. Two Years—Applies only to Cases other than of Preference.

Where a payment or conveyance is fraudulent *per se* the assignee must sue within two years. The second subdivision of Section 35 applies to transfers and conveyances, contra to the policy of, or in fraud of the Act, other than those made by way of preference for pre-existing debts.—*Brookmire & Rankin*, vol. 4, p. 196.

#### 5. Idem. Applies only where an Adverse Interest is Asserted.

When a bill in equity was brought to recover from the defendant money alleged to be due to the plaintiff, on an agreement made by the defendant with the bankrupts to pay them, as salaries for their services as clerks, certain portions of the net profits realized from the business carried on by defendant, and for an accounting, the court decided that a plea as to the Statute of Limitations was not warranted by the 2d Section of the United States Bankrupt Act of 1867, in the above case.—*Sedgwick, Assignee, etc., v. Casey*, vol. 4, p. 496.

#### 6. Idem.

A demurrer to the petition of the bankrupt's assignee, to recover property fraudulently conveyed by one who claims the property by virtue of a voluntary assignment of the debtor, will not be sustained simply on the ground that more than two years have elapsed since the cause of action accrued.—*In re P. H. Krogman*, vol. 5, p. 116.

#### 7. Idem.

The limitation of two years in Section 2 of the Bankrupt Act, applies only to property held adversely to the bankrupt and his assignee.—*Davis v. Anson et al.*, vol. 6, p. 146.

#### 8. Idem. Does not Apply to Collection of Ordinary Debts.

The two years' limitation, in Section 2,

only applies to such suits of those to which, by that Section, concurrent jurisdiction is given to the Circuit Court, and which must be brought in a plenary as distinguished from summary manner. It does not apply to the collection of ordinary debts.—*Sedgwick v. Casey*, 4 N. B. R., 161 quarto, affirmed; *Smith v. Crauford*, vol. 9, p. 38.

**9. Idem. As Against Creditors after Neglect of Assignee.**

A confessed a judgment in favor of his wife, and executed a conveyance to B, of certain real estate, who afterwards reconveyed it to A's wife, with the fraudulent purpose and intent, as it was alleged, to defraud A's creditors. He was subsequently adjudged a bankrupt, and one of his creditors filed a bill in equity alleging the above facts. The defendants interposed the statute limitation of two years, provided for in the 2d Section of the Bankrupt Act, against the relief prayed for.

*Held*, That if the charges made in the bill be true, and were known to the assignee, it was his duty to have filed the bill so as to subject the land and other property which has been fraudulently covered up by the proceedings, to the payment of the debts and demands proven against the estate; and if he (the assignee) refused, any creditor who had proved his debt had a right to apply to the court for an order directing proceedings to be taken for that purpose.—*Freedlander v. Holloman*, vol. 9, p. 331.

**10. Idem. An Amendment making Assignee a Party Ineffectual.**

A bankrupt brought suit in September, 1870, to recover certain land alleged to have been held in trust for him, demanding an account, payment of rents, conveyance of the land, etc.

The assignee in bankruptcy was appointed February 25th, 1869, though not made a party to this action until the 11th of March, 1872.

The court below denied its jurisdiction of the action, on the ground that it was barred by the limitation of two years contained in the 2d Section of the Bankrupt Act of 1867, and directed a verdict to be given in favor of the defendants.

*Held*, That an assignee may sue, or be

sued, in the State courts, but that Section 2 of said Act limits the bringing of an action of this kind to two years from the time the cause of action accrued for or against such assignee.

That an amendment by which the assignee was made a plaintiff more than two years after his appointment did not have the effect to relate back and make him the plaintiff *ab initio*, and thereby defeat the Statute of Limitations.

Judgment of the court below affirmed.—*Daniel Cogdell v. William J. Exum*, vol. 10, p. 327.

**11. State Statutes of—unless Barred throughout the United States.**

Bankrupt set forth in his schedules a debt due a creditor which was barred by the Statute of Limitations of the State in which both resided, and wherein the debt had been contracted. On the creditor seeking to examine the bankrupt, he objected.

*Held*, That the debt was provable in bankruptcy, unless it were shown to be barred throughout the United States; and that the creditor had a right to examine the bankrupt under Section 26.—*In re J. T. Ray*, vol. 1, p. 203.

**12. Idem. Will not Bar Debt in Bankrupt Court.**

A debt barred by the Statute of Limitations of the State in which the bankrupt resides, may still be proven against his estate in bankruptcy.—*In re Luther Shepard*, vol. 1, p. 439.

**13. Idem. Contra.**

A debt barred by the Statute of Limitations of Maine, where the bankrupt resides, cannot be proved against his estate in bankruptcy by a creditor resident in another State notwithstanding such demand is not barred by the Statute of Limitations in the State where the creditor resides.—*In re Heman P. Harden*, vol. 1, p. 395.

Such debt is not revived by its entry on the schedule of liabilities of the bankrupt.—*Ib.*, vol. 1.

**14. Idem.**

Unless Congress has otherwise provided, State Statutes of Limitation are applied to controversies in the courts of the United States.



### 15. *Idem.* Congress may Supersede all State Legislation.

It is within the power of Congress in establishing a uniform system of bankruptcy to provide a uniform rule on the subject of the limitations of actions, which rule must of necessity supersede all State legislation on the subject.—*Peiper v. Harmer*, vol. 5, p. 252.

### 16. *Idem.* Their Abrogation not Intended by the Act.

It was not the intent or purpose of the Bankrupt Law to abrogate State Statutes of Limitation, and such is not its effect. Whether Congress has power to do so, *quære*.—*In re Cornwall*, vol. 6, p. 805.

### 17. When Statute begins to Run—as to Fraud.

The fraud which in equity will prevent the running of the Statute of Limitations, is that which is secret or concealed, as distinguished from that which is open, visible, or known, and a secret or concealed fraud is in equity a fraudulent concealment of the cause of action.

Even in cases of fraud, the statute will in equity begin to run as against the plaintiff when he has knowledge or information of facts which reasonably creates the belief that the transfer is fraudulent and can be proved to be so; and if, under all the circumstances, the plaintiff has been guilty of negligence in discovering or attacking the fraud, the statute will begin to operate against him from the period his laches commenced.

What, in the view of a court of equity, will be regarded as a *discovery* of the fraud considered.

The statute of Missouri, which provides that "actions for relief on the ground of fraud must be brought within five years after the cause of action accrued, but the cause of action shall be deemed not to have accrued until the discovery by the aggrieved party at any time within ten years of the facts constituting the fraud," construed and considered as in substance enacting the equity rule on the same subject, and fixing the period of limitation.

In an action by an assignee in bankruptcy of a fraudulent debtor, where the fraud was *continuous*, and the debtor remained down to the time suit was brought, the

real owner of the property sought to be recovered and in possession of it,

*Held*, That the statute did not bar the suit, even though the initial fraudulent transaction took place more than five years before suit was commenced.—*Martin, Assignee, etc., v. Smith et al.*, vol. 4, p. 275.

### 18. *Idem.* Upon Bill of Exchange.

The liability of the drawer, upon a bill of exchange payable to his own order, to a subsequent indorser who pays it after it has been dishonored by the acceptor, does not first accrue at the time of such payment, but the Statute of Limitations begins to run against it from the time of the dishonor of the bill.—*Hunt et al. v. Taylor et al.*, vol. 4, p. 683.

### 19. Bars Objection to Discharge.

A person whose claim was barred by limitation at the time of alleged removal of property cannot be heard in objection to discharge.—*Burk*, vol. 3, p. 296.

### 20. New Promise.

Where a debt is barred by the Statute of Limitations, a promise by the debtor to pay it when able has been regarded as a conditional promise, and not to operate as a revival entitling the creditor to sue until ability to pay appears; but where there is a present debt a promise to pay it when able does not destroy or postpone the right of the creditor to sue, nor does it in any wise hinder or prevent the running of the statute.—*In re Cornwall*, vol. 6, p. 805.

Nor does a promise to deposit the money in a savings bank, to the account of the creditor, convert the relation of the parties into that of trustee and *cestui que trust*, so as to prevent the running of the statute.—*Ib.*

### 1. With Knowledge of Insolvency.

The Bankrupt Act does not prohibit the loaning of money at legal rates to one whom the lender has reason to believe insolvent, and taking security therefor, provided it be made *bona fide* and without any intent, or participation in any intent to defraud creditors, or to defeat the Bankrupt Act.—*Darby's Trustees v. Boatman's Savings Institution*, vol. 4, p. 601.



**2. Idem.**

There is nothing in the Bankrupt Law which forbids the loaning of money to a man in embarrassed circumstances, if the purpose be honest and the object not fraudulent, and it makes no difference that the lender had good reason to believe the borrower to be insolvent, if the loan was made in good faith without any intention to defeat the provisions of the Bankrupt Act.

If the struggle to continue his business be an honest one on the part of the debtor, and not for the fraudulent purpose of diminishing his assets, it is not only not forbidden, but it is commendable, for every one is interested that his business should be preserved.—*Tiffany v. Boatman's Savings Institution*, vol. 9, p. 245.

## LUMBERMAN.

**1. Is a Trader.**

One who is engaged in the manufacture and sale of lumber is a trader within the meaning of the said Act.—*Cowles*, vol. 1, p. 280.

**2. Is a Manufacturer.**

A person who prepares for market and sells lumber, which is the growth of his own land, is a manufacturer within the meaning of the Bankrupt Act, as amended by the Act of July, 1870.—*Chandler*, vol. 4, p. 213.

## MANDAMUS

**1. To Compel Levy by Sheriff.**

A sheriff refused to make a levy on certain real estate, assigning as a reason that it had been set off to the debtor as a homestead under a State statute passed several years after the recovery of the judgment, on appeal to the U. S. Supreme Court.

*Held*, That a writ of mandamus should issue, that the legal remedies for the enforcement of a contract which belong to it at the time and place where made, are part of its obligations, which a State cannot change to the extent of impairing a substantial right.—*Gunn v. Barry*, vol. 8, p. 1.

## MANUFACTURER.

See FOURTEEN DAYS,  
COMMERCIAL PAPER,  
FRAUDULENT SUSPEN-  
SION.

**1. Lumberman.**

A person who prepares for market and sells lumber, which is the growth of his own land, is a manufacturer within the meaning of the Bankrupt Act, as amended by the Act of July, 1870.—*Chandler*, vol. 4, p. 213.

**2. Publishers and Printers.**

The publishers of a daily paper and proprietors of a book and job printing office are manufacturers within the meaning of the Bankrupt Act.—*In re Kenyon & Fenton* vol. 6, p. 238.

## MARRIED WOMAN.

See ACT OF BANKRUPTCY,  
ADJUDICATION,  
BANKRUPT,  
COMMERCIAL PAPER,  
EXEMPTIONS,  
HUSBAND AND WIFE,  
PLEADING,  
WIFE OF BANKRUPT.

**1. Engagement in Trade Without Conformity to Statute.**

A *femme covert* engaged in trade must do so in accordance with the statute of the State. Not having done so, and being incapacitated to make contracts, she may avail herself of her coverture to defeat the debt which is the basis of bankruptcy proceedings.—*In re C. H. & D. P. Slichter*, vol. 2, p. 336.

**2. Promissory Note of.**

A petition in involuntary bankruptcy was filed against an alleged bankrupt, a married woman, having separate estate, grounded on the non-payment of certain promissory notes of her hand.

*Held*, That inasmuch as it did not appear on the face of the notes that it was her intention to bind her separate estate, and there being no allegation that it was given for the benefit of the separate estate, or in course of trade, petition must be dismissed, with permission to amend on payment of costs.—*In re Howland*, vol. 2, p. 357

**3. As Surety.**

By the laws of Texas a wife cannot charge her separate estate by becoming surety on a general bond, and nothing to its worth is added by her execution thereof. *McFaden*, vol. 3, p. 104.

**4. May Engage in Trade and Employ her Husband.**

A married woman may carry on business on her own account and for her own interest; that she may employ all needed labor, workmen, and agents, and that she may employ her own husband, and pay him.—*Driggs, Assignee, v. Russell et al.*, vol. 3, p. 161.

**5. Control of Separate Property—Engaging in Trade—Partnership with Husband.**

The common law rule that a married woman could not enter into a copartnership or make any valid contract, has been much relaxed, and the rule in equity now seems to be that she may hold, control, and dispose of her separate property, incur liabilities on the strength of it, and that it may be subjected to the payment of her debts contracted in or about the management, improvement, or purchase of such property.

In Illinois a married woman retains control of all the profits, real or personal, which she had at the time of her marriage, or acquired thereafter, from any person other than her husband, and may make contracts in regard to the same which can be enforced either at law or in equity, to the same extent as if she was sole.

She may also engage in trade with her husband's consent, and, it seems, even without such consent—using her own property—and may bind herself by all contracts she makes in her business.

When a man and his wife hold themselves out to the world as partners in trade, it will be presumed, in the absence of proof, that she contributed her share of the capital, and that her time, skill, and savings, went into the business.

When, in such case, the firm became bankrupt, the partnership creditors are entitled to be paid, in preference to individual creditors of the husband, out of the partnership assets.

Such a partnership can be adjudged bankrupt, and, it seems, the wife may also,

individually, be adjudged a bankrupt.—*In re Kinkead*, vol. 7, p. 439.

**6. When may be Adjudicated Bankrupt—When may Contract, in Indiana.**

A married woman can only be adjudged bankrupt when the law of her domicile gives her the power to contract.

In Indiana a married woman, unless possessed of separate estate, is incapable of making a contract.—*In re Goodman*, vol. 8, p. 380.

**7. May be Adjudicated either in Voluntary or Involuntary Proceedings.**

A married woman may be adjudged a bankrupt either on her own petition or on a petition against her, the jurisdictional facts being shown.—*Collins*, vol. 10, p. 385.

**8. Loses Claim, after Reconciliation with Husband, to Property Settled on her upon Separation.**

Where, upon a separation *a mensa et thoro*, the husband makes a settlement to his wife of property, and they afterward become reconciled, live together, but, upon the reconciliation, it is agreed that the property previously settled shall remain the separate property of the wife.

*Held*, This reconciliation destroys all the elements of value, and places the settlement as one purely voluntary.—*Kehr et al. v. Smith, Assignee*, vol. 10, p. 49.

## MARSHAL.

See ARREST,  
COSTS AND FEES,  
EXPENSES,  
INVOLUNTARY BANK-  
RUPTCY,  
REGISTER,  
SEIZURE,  
SURRENDER,  
TRESPASS,  
WARRANT TO MAR-  
SHAL.

**1. Return of, Not Conclusive.**

The return by the marshal, as to the service of notice on creditors, is not conclusive. Sections 12 and 13.—*Hill*, vol. 1, p. 16.

**2. Idem. How Made.**

The return may be made wholly on the warrant, or separately on the warrant and

order of adjudication.—*In re Kennedy & Mackintosh*, vol. 7, p. 337.

### 3. Service by—Subpoena.

In the United States courts it is not necessary that the subpoena for witnesses should be served by the marshal.—*McMillan & Co. v. Scott & Allen*, vol. 2, p. 86.

### 4. Idem. Beyond District.

There is nothing in the General Orders in Bankruptcy, or in the Rules in Equity prescribed by the Supreme Court, which authorizes a marshal to serve a subpoena to appear and answer in an equity suit at a place outside of the territorial limit of the district for which he is appointed.—*Jobbins, Assignee, v. Montague et al.*, vol. 6, p. 117.

### 5. Idem. Order of Adjudication.

If a marshal undertakes the service of the warrant, the service of the order of adjudication by him is a necessary incident to that duty.—*Kennedy & Mackintosh*, vol. 7, p. 337.

### 6. Seizure of Bankrupt's Property may be made Wherever Property is Found—Duty when Indemnified.

A transferred property to B, with a view to giving a preference. C purchased a portion of said property from B. The marshal seized the property and effects of A, including that purchased by C, under warrant, whereupon C prays the court to order a return of same.

*Held*, That the marshal, under a warrant issued in accordance with Section 40 of the Bankrupt Law, may take possession of the property of the debtor wheresoever and in whose hands soever he may find it.

That if indemnified, it is made his duty in the one case to *retain* possession, and to *take* possession in the other. With indemnity, he would be liable if he did not exercise his authority—without it, it is optional with him.—*D. M. Briggs*, vol. 3, p. 638.

### 7. Idem. Transcending Authority.

The United States marshal under provisional warrant to seize the effects of the bankrupt, took goods claimed by one W., and being indemnified under G. O. No. 13, delivered the same to the assignee in bankruptcy. W. sued the marshal upon the tort in the State court. Alleged the claim of W. thereto to be illegal, and that he dis-

posed of a portion thereof while in his possession, and prayed that W. be ordered to account therefor, and be permanently enjoined from prosecuting his action against the marshal.

*Held*, That the facts do not warrant the granting of such injunction; the marshal is responsible if the seized property is not belonging to the bankrupt, and the petitioning creditors are bound to defend him in the suit by the claimant.—*In re Marks*, vol. 2, p. 575.

### 8. Idem.

Where the warrant to a marshal transcends the power conferred on a United States District Court by Section 40 of the United States Bankrupt Act, properly taken possession of by the marshal from a person other than the bankrupt, cannot be held by the assignee in bankruptcy.—*Harthill*, vol. 4, p. 392.

### 9. Idem. Can be Made only by Marshal.

In involuntary cases the marshal alone is authorized, as messenger, to seize and retain the custody of the bankrupt's property until the assignee is appointed.—*Howes & Macy*, vol. 9, p. 423.

### 10. Charges of Attendance — Preparing Notices.

A charge of ten cents per folio for preparing notices to creditors is an improper charge.

An item for attendance is an improper charge.—*Talbot*, vol. 2, p. 280.

### 11. Idem. Interest.

A marshal is not entitled to charge interest upon fees earned, but when his expenditures exceeds the amount of money paid to him in advance on account of costs, justice requires that he should be compensated by allowing the usual rate of interest on the excess.—*Donahue & Page*, vol. 8, p. 453.

### 12. Idem. Mileage.

Travel by a U. S. marshal as messenger to make return on warrant of bankruptcy is necessary, and mileage of five cents per mile therefor is a proper charge.—*Talbot*, vol. 2, p. 280.

### 13. Idem.

A United States marshal is authorized to charge for all necessary travel in serving papers, but the language of Section 47 of the Bankrupt Act precludes all construc-

tive mileage; therefore, it is essential that he should name the place of service in his return, in order that the correctness of the mileage charged may appear upon its face.

If he has two or more processes in his hands at the same time, and in the same matter or proceeding, he can charge mileage but once.

Should the service of any one of such processes make additional travel necessary, such additional travel may be charged for in the return.

#### 14. *Idem.* Storekeeper.

A marshal can only be allowed a charge for a storekeeper, not to exceed two dollars and a half per day, on showing the necessity for his employment, the reasonableness of the price paid, and the actual payment to the storekeeper.—*Comstock*, vol. 9, p. 88.

#### 15. Vouchers for Charges.

Marshals must present vouchers for the items charged in their accounts, or produce satisfactory reasons for the absence of vouchers.

#### 16. Sale by, as Messenger.

A sale by the marshal as messenger, under a special order of the court, prior to the appointment of an assignee, is to be considered as in the nature of a sale made by a provisional assignee.—*Hitchings*, vol. 4, p. 884.

### MARSHALING OF ASSETS.

See EQUITY,

PARTNERSHIP CREDITORS.

#### 1. The Rule Stated.

A creditor of a partnership having a lien on both the partnership and individual assets of the members, may resort to either fund for payment at his option, unless there are creditors having liens only on the individual fund, when the equitable rule as to two funds will apply, and the partnership creditor must first exhaust the partnership fund.—*Lewis*, vol. 8, p. 546.

#### 2. The Rule Never Enforced to Creditor's Prejudice.

The rule that one having a lien upon two funds, must so act as not to disappoint the just expectations of another having a lien on one of them only, is founded in social duty, and is never enforced to the prejudice of the double fund creditor.—*Jervis v. Smith*, vol. 3, p. 594.

#### 3. Firm and Separate Creditors.

Under Section 86 assets are to be marshaled between the firm creditors and the separate creditors of the partners only when there are firm and separate assets, and proceedings are instituted against the firm and the individual members, as provided in that section.—*Downing*, vol. 3, p. 748.

### MECHANIC'S LIEN.

See LIEN.

#### How Created. Notice. Not Opposed to Policy of the Act.

Under the lien act of Oregon, the lien of a mechanic or material man arises from the doing of the work or the furnishing the material and attaches to the building from that time, upon the condition subsequent that the lien creditor file a notice of his intention to hold such lien within three months from the completion of the building. The notice required to be filed does not *create* the lien, but is necessary to *preserve or continue* it beyond three months after the completion of the building, and therefore, the commencement of proceedings in bankruptcy between the doing of the work or furnishing of material and the filing of such notice does not impair or affect the lien or the right of the lien creditor to continue it by filing the notice.

The lien given by the local act to mechanics or material men is not opposed to the terms or policy of the Bankrupt Act, as it in no way prefers one creditor at the expense of another or diminishes the general assets of the debtor otherwise applicable to the payment of his general creditors.—*In re Coulter*, vol. 5, p. 64.

### MEETINGS OF CREDITORS.

See ADJOURNMENT,  
CREDITORS,  
DISTRIBUTION,  
INVENTORY,  
MARSHAL,  
NOTICE,  
REGISTER,  
VOTE,  
WARRANT TO MARSHAL.

#### 1. Notice of.

The Register fixed the day for the first meeting of creditors at sixty days after

the date of the warrant, and directed notices to be mailed, postage paid, to the creditors, all of whom resided within the United States. The bankrupt objected that such creditors were to be notified constructively, and not by mail or personally, under Section 11.

*Held*, That the action of the Register was correct.—*Julius Heys*, vol. 1, p. 21.

## 2. *Idem*.

For first meeting July 24. The marshal returned that he had made first publication, and mailed notices July 15. The Register decided the notice insufficient, and adjourned the day of meeting to August 8, following. On that day the marshal returned that he had sent notices by mail, to creditors, July 29, but no further publication had been made.

*Held*, Both notices were insufficient.—*In re Patrick C. Devlin & John Hagan*, vol. 1, p. 35.

## 3. *Idem*.

When the bankrupt does not apply for his discharge within three months from the time of his being adjudged a bankrupt, the notice need say nothing about the second or third meetings of creditors.—*Anonymous*, vol. 2, p. 68.

## 4. *Idem*.

An omission to publish notice of the first meeting of creditors to prove their debts in one of the papers designated for that purpose, is sufficient irregularity to set aside the proceedings before had.—*In re Hull*, vol. 2, p. 192.

## 5. For Choosing Assignee.

A meeting to prove debts and choose an assignee should be organized at the hour designated in the official notice, and should be kept open until an assignee is chosen, or it is ascertained that no choice can be made.—*In re Phelps, Caldwell & Co.*, vol. 1, p. 525.

## 6. *Idem*. Where no Creditors Attend.

Where no creditors attend on the day fixed for the first meeting, the Register may appoint an assignee under the provisions of Section 13.—*In re Mortimer C. Cogswell*, vol. 1, p. 62.

## 7. *Idem*. Where only One Creditor Attends.

When a single creditor appears at the

first meeting of creditors and proves his debt, the right to choose the assignee belongs to him.—*In re Haynes*, vol. 2, p. 227.

## 8. Adjournment of.

On the due return of warrant by marshal in a case of involuntary bankruptcy, counsel for bankrupts moved for further time to prepare proper schedules, the number of creditors and non-adjustment of accounts having prevented their completion. No one opposing, Register certified the facts and asked for new warrant to issue.

*Held*, The proper course was for the Register to adjourn the meeting of creditors to a day certain, on the ground of non-service of notice to creditors, and to have directed service of new notice, by mail or personally.—*Schepeler et al.*, vol. 3, p. 170.

## 9. *Idem*.

If the business of the last meeting before the Register is not finished, or the papers are not filed in the clerk's office before the day appointed for the hearing in court, weekly continuances are entered by the clerk, so that the notices may remain in force; and the time for entering opposition is, on the return of the papers, enlarged for ten days from next stated weekly session.—*Benj. Sherwood*, vol. 1, p. 345.

## 10. *Idem*.

There can be only one first meeting of creditors, and all adjournments are but continuance of the same, and if there appear any opposition or opposing interest to the appointment of a particular assignee, at any stage of the meeting, such opposition is to be considered as continuing until the termination of such first meeting, whether upon the day first appointed, or any other day to which such meeting might be continued, unless it affirmatively appeared that such opposition was withdrawn.—*In re C. H. Norton*, vol. 6, p. 297.

## 11. Opposition to Discharge.

Where a creditor at the first meeting of creditors gave notice of intention to oppose the discharge, and filed objections, the reception whereof was opposed by bankrupt at that time,

*Held*, That a creditor who had proved his debt, could file specifications in opposition to the discharge at any time before the period fixed by General Order 24.—*In re Adolph Baum*, vol. 1, p. 5.



**12. Where no Assets in Assignee's Hands.**

Where no debts have been proved against bankrupt, or no assets have come to the assignee's hands, the order (Form 51) should contain directions under General Order 25, respecting second and third meetings of creditors, if the same shall not have been held.—*In re John Bellamy*, vol. 1, p. 96.

**13. Idem.**

No second meeting of creditors under Section 27, and no third or other meeting under Section 28 of the Bankrupt Act, ought to be called, or requested by an assignee, unless there be moneys in his hands for a dividend.—*In re Nathan A. Son*, vol. 1, p. 310.

**14. When cannot be Called.**

A third meeting of creditors—not being a final meeting—should not be called except for cause shown, and if the Register be satisfied that no such cause exists, he is justified in refusing to grant the order for such a meeting.—*In re Clark & Bining*, vol. 6, p. 194.

**15. Postponement of Claim.**

Where the claim of a creditor at first meeting is postponed by the Register, and again presented after the election of assignee,

*Held*, That the proof of claim must be treated in all respects as if it had not been before tendered.—*Herrman & Herrman*, vol. 3, p. 649.

**16. To Consider Proposition for Composition.**

When a debtor has had a meeting of his creditors duly called and held, and has had his proposition for a settlement duly considered and passed upon, he should abide by the decision then had, and not be permitted to annoy creditors by requiring their attendance at further meetings. But where it clearly appears that the object of the meeting failed, by reason of the failure to properly instruct the attorneys who represented the dissenting creditors, it is proper to direct another meeting to be called for the purpose of again considering and acting upon the debtor's offer for a composition.—*In re McDowell et al.*, vol. 10, p. 459.

**17. Passing Assignee's Accounts.**

A Register has power so to audit and

pass the accounts of an assignee at a second meeting called only under the 27th Section of the Act as to bind creditors, even though no notice had been given under the 28th Section or otherwise, that such accounting would be had, and though such accounts be not filed until the hour of the meeting. If the creditors omit to attend such meeting, or fail to object to such accounts, it is the duty of the Register to direct their payment. The provision in Section 28 for auditing and passing the account of the assignee, at the meeting for the final dividend, cannot be regarded as in any manner implying that such accounts of the assignee as are presented at the second general meeting of creditors shall not then be audited and passed by the Register.—*In re Clark & Bining*, vol. 6, p. 197.

**18. Idem.**

When the Register gave notice at the second meeting of creditors, called only under the 27th Section of the Act, that the accounts of the assignee filed at such meeting would not be audited or passed at such meeting, as no notice of such auditing or passing had been given to the creditors, and as the amounts had not been on file ten days, as required by the 28th Section of the act,

*Held*, On an application by the assignee to the district judge to compel the Register to order the payment of such accounts, that the Register was right in refusing to make such an order.—*In re Clark & Bining*, vol. 6, p. 204.

## MERGER.

**1. Of Debt into Judgment.**

A debt existing at the time of commencement of proceedings in bankruptcy is not so merged in a judgment obtained thereafter as to deprive the creditor of the right to prove it.—*Brown*, vol. 3, p. 584; *Vickery*, vol. 3, p. 696.

**2. Idem.**

Where a creditor, after proceedings are commenced in bankruptcy, reduces his claim against the bankrupt to judgment, the original claim becomes merged in the judgment, and he cannot afterwards prove his debt or interfere with the bankruptcy proceedings.—*Mansfield*, vol. 6, p. 388.



**3. Of Mortgage.**

A, being indebted to B, executed a mortgage upon his entire stock of goods, to secure the payment of the sum due in one year. Two years after, the mortgage and interest having increased several hundred dollars, A gave B his note for the amount at thirty days, and executed another mortgage on the stock of goods then in hand, which consisted partly of the old stock and partly of the new. This last mortgage was given within four months of the commencement of proceedings in bankruptcy.

*Held*, That on taking the second mortgage the first ceased to have any effect, and the mortgagee's rights as to lien must be determined solely by the second mortgage.—*Jordan*, vol. 9, p. 416.

## MESSENGER.

See COSTS AND FEES.

## MILEAGE.

See MARSHAL.

**Service of Subpoena.**

The party who serves a subpoena is entitled to recover for service and mileage.—*Gordon et al. v. Scott et al.*, vol. 2, p. 86.

## MINOR.

See ACT OF BANKRUPTCY,  
JURISDICTION,  
RATIFICATION.

**1. Claim of Parent for Services of.**

Upon proof of claim made by the father of a minor son, for the labor of such son, as an operative in the employment of the bankrupt within the six months next preceding the first publication of the notice of proceedings in bankruptcy,

*Held*, That the father is entitled to be preferred, to an amount not exceeding fifty dollars, according to Section 28.—*Harthorn*, vol. 4, p. 103.

**2. Setting aside Adjudication against  
—Debt not Contracted for Necessaries—Infants not Within Provisions of the Act.**

At the time the debtor was adjudged a bankrupt he was a minor. Certain creditors who had not proved their debt in bankruptcy, filed a petition to set aside the adjudication on the grounds: 1st, That

the debtor was a minor: 2nd, That the petitioning creditor's claim, not having been for necessities, was not provable in bankruptcy, and therefore not capable of supporting the petition for adjudication. Before this case was heard the debtor arrived at majority, filed a petition ratifying the proceedings already commenced against him, acknowledging the claim of the petitioning creditor, and asking that the proceedings on his petition be continued and perfected.

*Held*, Any creditor, whether he has proved his debt or not, may move to set aside an adjudication of his debtor as a bankrupt, whenever such adjudication injuriously affects his interests.

The question as to whether an infant may voluntarily petition in respect of contracts for which he is liable, such as debts for the value of necessities, left open and undecided.

A debt contracted by an infant (not for necessities) cannot be proved in support of a petition in bankruptcy.

Infants, at least in regard to their general contracts, as subjects of voluntary or involuntary bankruptcy, are not embraced within the provisions of the Act of 1867.—*Derby*, vol. 8, p. 106.

## MISDEMEANOR.

See GAMING  
INDICTMENT,  
INFLUENCING PROCEEDINGS,  
PAYMENT,  
THREE MONTHS,  
TRANSFER.

**1. Defined.**

Offences under Section 44 are misdemeanors, and the word "feloniously" should not be used.—*United States v. Prescott et al.*, vol. 4, p. 112.

**2. Disposing of Goods with Intent to Defraud.**

An indictment, where defendant is charged with disposing of certain of his goods and chattels, within three months of his bankruptcy, other than in the ordinary course of his trade, which he had obtained on credit, and which remained unpaid for. Defendant was sentenced to fifteen months imprisonment (on being convicted).—

*United States v. Hugh Clark*, vol. 4, p. 59.

### 3. Obtaining Goods with Intent to Defraud.

An insolvent obtained goods on credit from various parties with the intent to defraud, under the false color and pretense of carrying on business and dealing in the ordinary course of trade, and on a hearing before a commissioner, he was held to bail in the sum of five thousand dollars.—

*United States v. Geary*, vol. 4, p. 534.

## MISJOINDER.

See PARTIES,  
PARTNERS,  
PLEADING.

The objection as to a misjoinder of parties can only be taken advantage of by those who are improperly joined.—*A. S. Spaulding v. John McGovern and wife and Miller Ford*, vol. 10, p. 188.

## MONEY.

See EXEMPTION,  
GOLD COIN.

### 1. In Lieu of Exempted Property.

An assignee has no right where bankrupt's property has been seized and sold under execution and distress for rent, to allow money, the proceeds of debts due to the bankrupt, for the purpose of making good the property that would have been exempted had it not been sold.—*Lawson*, vol. 2, p. 54.

### 2. Idem.

Money cannot be set apart to the bankrupt as part of his exempt property unless such money is the proceeds of specific things which could and ought to be set apart under the head of "other articles and necessities of the bankrupt."—*In re Welch*, vol. 5, p. 348.

### 3. Allowance of for Subsistence.

Money can be allowed by the assignee, when the exigencies of the bankrupt seem to require it, for the temporary subsistence of his family.—*Thornton*, vol. 2, p. 189.

### 4. Of Wife Deposited with Bankrupt.

Where a wife deposited money of her own with her husband for safe-keeping before bankruptcy, and from time to time received from him portions thereof, but left

a balance of seven hundred dollars in his hands, upon adjudication in bankruptcy,

*Held*, That she was entitled to put her claim as a general creditor on that amount.—*Bigelow et al.*, vol. 2, p. 556.

### 5. Proceeds of Sale upon Execution.

"Bankrupt's property" includes money raised on execution by the sale thereof.—*Mills et al., v. Davis et al.*, vol. 10, p. 340.

## MORTGAGE.

See BONA FIDE PUR-  
CHASER,  
ENCUMBERED PROP-  
ERTY,  
EXEMPTIONS,  
FORECLOSURE  
FRAUD,  
FRAUDULENT CON-  
VEYANCES,  
HOMESTEAD.  
LIEN,  
PARTNERS,  
RECORDING  
SECURITY,  
SURRENDER.

## MORTGAGE—

- I. *As an Act of Bankruptcy*, p. 498.
- II. *For Advances*, p. 501.
- III. *Chattel Mortgage*, p. 502.
- IV. *By Corporations*, p. 503.
- V. *Deficiency*, p. 504.
- VI. *Exemptions*, p. 504.
- VII. *Foreclosure*, p. 504.
- VIII. *Recording and Filing*, p. 505.
- IX. *Rents and Profits*, p. 507.
- X. *Sale under Power of the Court*, p. 507.
- XI. *Second Mortgage*, p. 507.
- XII. *Severance of Mortgage*, p. 508.
- XIII. *Upon Vessels*, p. 508.
- XIV. *Miscellaneous*, p. 508.

### I. *As an Act of Bankruptcy.*

#### 1. Securing Pre-existing Indebtedness.

A debtor who executes a chattel mortgage to secure a pre-existing indebtedness with intent to delay, hinder, and defraud his creditors, commits an act of bankruptcy.—*In re Walter C. Cowles*, vol. 1, p. 280.

**2. Idem.**

Where a firm, being insolvent, and known by the partners to be so, is dissolved, and the silent partner conveys all his interest in the joint property to the active partner, who on the same day, and as part of the same transaction, mortgages the whole stock in trade to secure the pre-existing debt of a separate creditor of each partner, and neither partner had any separate estate,

*Held*, That this transaction is fraudulent in the sense of the Bankrupt Law as a preference; and both partners are liable to be adjudged bankrupt on the petition of a joint creditor seasonably filed.—*Waite & Crocker*, vol. 1, p. 373.

**3. Idem, within Four Months.**

A mortgage given to secure the payment of two promissory notes, the consideration of which being pre-existing debts of the bankrupt, for almost all of which the mortgagees were liable either as sureties or indorsers, is void when it appears that it was made within four months next preceding the filing of the petition in bankruptcy, for the express purpose of giving a preference; that the mortgagors were insolvent, and the mortgagees had reasonable cause to believe that the mortgagors were insolvent at the time of the execution of the mortgage, and that the conveyance was made in fraud of the provisions of said Act.—*Scammon, Assignee, v. Cole et al.*, vol. 5, p. 257.

**4. Preferences Must be Contested.**

The assignee in bankruptcy represents the whole body of creditors, and it is his right and duty, to contest the validity of any mortgage by which one creditor has obtained a preference over another.—*In re Mitzger*, vol. 2, p. 355.

**5. Bona Fides.**

A bankrupt borrowed two hundred and fifty dollars of G. in October, 1868, without security or date of repayment mentioned, and on December 17, thereafter, borrowed one thousand dollars more, and gave chattel mortgage on his household furniture to secure the repayment thereof, and also of the said two hundred and fifty dollars, which was duly recorded. On the 24th of December, bankrupt petitioned in voluntary bankruptcy, and was thereupon adjudicated bankrupt, and assignee was appointed Feb-

ruary 3, 1869. Mortgagee demanded payment on February 5, 1869, and sold and assigned her mortgage to S. on the 8th of February, for twelve hundred and fifty dollars. S. took possession of the mortgaged property, supposed to exceed in value the amount of the mortgage. Assignee in bankruptcy petitioned to have said mortgage set aside as void.

*Held*, The mortgage is valid as to the one thousand dollars, it not being shown that the same was not made in good faith.

It is valid as to the two hundred and fifty dollars, the mortgagee not having reasonable cause to believe it was made in fraud of any provision of the Bankruptcy Act.—*Rosenberg*, vol. 3, p. 130.

**6. Made out of Ordinary Course of Business.**

Where a stock of goods, which had been mortgaged, were taken possession of by the assignee, and were sold by order of court, and the money held subject to its order, the mortgagee claiming it by petition, and the assignee opposing on the ground that the mortgage was voidable under 2d clause of 33d Section of the Bankrupt Act, the mortgagor being a trader, and the loan being made out of the ordinary course of business within four months of the mortgagee's bankruptcy,

*Held*, That the mortgagee's petition must be dismissed, for the reason that it was out of the ordinary course of business; the mortgagor being a retail dealer, a mortgage of the whole of his stock was a confession of insolvency. If made directly to the creditor, it would have been an act of bankruptcy; and here both parties seem to have considered it injurious to the mortgagor's credit, and agreed that it should not be recorded until some necessity should arise therefor.

If the mortgagee should have applied to court to direct assignee to bring an action against the creditor who received the proceeds of the mortgage, an order would probably have been made to that effect.—*In re Butler*, vol. 4, p. 302.

**7. Knowledge of Insolvency—by Mortgagee.**

A mortgage given when a debtor was insolvent is not valid, if the mortgagee had reasonable cause to believe that the debtor

was insolvent, and that the mortgage was given in fraud of creditors; hence, the prayer of a petition asking that such mortgage be first paid off from the avails of the mortgaged property must be denied.—*Merchants' National Bank of Hastings v. Truax, Assignee*, vol. 1, p. 545.

#### 8. *Idem*.

A creditor who accepts a chattel mortgage with a view to obtain a preference, having reasonable cause to believe at the time that a fraud on the act was intended, and that his debtor was insolvent, will not be allowed to prove his debt in bankruptcy, and likewise loses the lien of his mortgage.—*Bingham v. Richmond & Gibbs*, vol. 6, p. 127.

#### 9. *Idem*.

If the mortgagees had reasonable cause to believe the bankrupt insolvent, it is enough to defeat the mortgage, on the ground of preference. A subsequent judgment upon a claim that existed at the time of giving the mortgage, as a liability and not as a debt, does not change the relation of the party, and is neither a payment nor satisfaction of it.—*Burfee v. National Bank*, vol. 9, p. 314.

#### 10. *Idem*.

M. and C. were partners in trade, and on the dissolution of the firm, M. purchased of C. his interest in the business, giving his notes in payment, and executing a mortgage to secure the notes on the stock of merchandise and accounts of the firm. M. continued in business some time thereafter, and finally sold and transferred to C. the entire stock of goods then in his (M.'s) store. C. took possession of the stock and made sales on his own account.

At the time of the sale M. was hopelessly insolvent.

*Held*, That as the mortgage contained no provision by which the collections and proceeds of sales should be either applied to the purposes of the conveyance, to the payment of the debts to be secured, or indemnity to be provided, or by its reinvestment so as to augment the trust fund, the want of which is inconsistent with the alleged purpose of the conveyance, it is void upon its face.

That the sale gave C. a preference over the other creditors, and was therefore in-

valid; and that C. knew of the insolvency of M. at the time of the transfer, therefore he must pay into the court the value of the property, with interest from the time of the sale and transfer.—*J. J. Smith, Assignee, v. Geo. P. McLean & Charles B. Clark*, vol. 10, p. 261.

#### 11. *Idem*, within Four Months.

A mortgage given when a debtor was insolvent and when his creditor had reasonable cause to believe him to be so, is void if made within four months of the filing of a petition in bankruptcy, hence money received from the sale of the mortgaged premises, must be accounted for to the assignee.—*Sawyer v. Turpin*, vol. 5, p. 339.

#### 12. *Idem*. By Debtor not Essential.

To render a mortgage void under the 35th Section of the Bankrupt Act, it is not necessary that the debtor knew or believed himself insolvent. The Section treats of insolvency as a condition of fact, not of belief, and with knowledge of which, and its consequences, he is chargeable in law. It follows as a logical sequence, that when a man, insolvent in fact, gives a mortgage to one existing creditor, he does so with a view to give him a preference.—*Hall v. Wager & Fales*, vol. 5, p. 182.

#### 13. Present Consideration.

Where bankrupt was charged, on petition of creditors, with having, in December, 1867, executed a mortgage with intent to prefer other creditors, and, in April, 1868, with having suspended and not resumed payment within fourteen days, the court granted an injunction on said mortgage, and, in July, the debtor was adjudicated bankrupt. The bankrupt leased a spacious mansion, and converted it into an infirmary and bathing establishment, and was supplied with wares and merchandise for fitting up the same by the mortgagees, upon an agreement of credit.

*Held*, There is not sufficient ground in the evidence for adjudging that debtor was insolvent or contemplated insolvency, or that, in making the mortgage, he even thought of the Bankruptcy Act, much less intended to violate any of its provisions. The mortgagees wisely asked for security, and the debtor had a right to give it. They are not shown to have violated any law, nor, so far as appears in the proofs,

any private pledge or stipulation, or any wholesome custom of trade.—*Potter, Denison & Co. v. Coggeshall*, vol. 4, p. 73.

#### 14. *Idem.*

Where a petitioning creditor alleges in his petition, as an act of bankruptcy, that on the 29th day of October, 1870, the debtor made certain transfers of real and personal property with intent to delay his creditors; and the debtor in his answer (which was supported by proof), showed that the transfers were by way of mortgages. That both mortgages were given to secure the same sum (\$1,000), borrowed by the debtor on the 29th day of October, 1870, from the mortgage in order to relieve the debtor's stock in business from a contested attachment, and thus enable the debtor to go on in his business of manufacturing shingles. That the loan was specifically to settle this attachment suit, and also to pay the only overdue paper of the debtor, known by the mortgagee to be outstanding, except only such secured paper as the mortgagee already had.

*Held*, That as the mortgages were based upon a present consideration, and were neither given nor received with any intent to delay creditors, they did not constitute an act of bankruptcy.—*Sanford*, vol. 7, p. 352.

#### 15. Mortgages Included within Terms of the Act.

The word conveyance in the Bankrupt Act is a generic term, including all proceedings to dispose of or incumber property in derogation of the equality of creditors, with intent by such disposition either to defeat or delay the operation of the act; hence it includes mortgages on real estate, which if given contrary to the provisions of the 39th Section are void and deprive the mortgagee of all right to prove his claim in bankruptcy, even though he should be willing to surrender his rights under the mortgage.—*Bingham v. Frost and v. Williams*, vol. 6, p. 130.

#### 16. Preference in Part.

A and B were copartners. On dissolution, A bought B's interest, and gave B his notes for seven thousand dollars, secured by a chattel mortgage on the stock. A agreed to pay the firm's liabilities. Afterwards, A transferred his stock, notes and accounts,

worth some twelve thousand dollars to B, in payment of the seven thousand dollar notes, B agreeing to pay the firm debts, which were about five thousand dollars. A was adjudged a bankrupt, and his assignee filed his petition praying the court to compel B to surrender his preference.

*Held*, That under the facts of the case, the seven thousand dollars was a fraud as against the creditors of A, and that B should be allowed to prove for the five thousand dollars only.—*Stephens*, vol. 6, p. 533.

#### 17. In Compliance with prior Agreement.

A mortgage given in pursuance of a parol agreement to give security, if required, will not hold against the assignee in bankruptcy, if the act of giving the mortgage would have been a preference at the time it was given, but for the agreement.

Whether or not a written promise to convey certain definite property as security given when the debt was contracted, would save the mortgage afterwards given from being a preference, *quære*.—*Ex parte Ames, In re McKay & Aldus*, vol. 7, p. 230.

#### 18. Void as to Creditors.

A mortgage fraudulent and void as to creditors is so as against the assignee in bankruptcy.—*Morrill*, vol. 8, p. 117.

#### 19. *Idem.*

A mortgage void on its face as to creditors may be set aside by the assignee in bankruptcy though made more than four months prior to the commencement of bankruptcy proceedings.—*Seaver v. Spink, Assignee*, vol. 8, p. 218.

#### 20. Securing Debts Ratably—By Trader—By Railroad Company.

It seems that a mortgage for money to pay debts ratably would not be an act of bankruptcy, even in a trader.

A railroad company giving a mortgage for the equal security or payment of all to unsecured creditors does not thereby commit an act of bankruptcy.—*Union Pacific R. Co.*, vol. 10, p. 178.

### II. For Advances.

#### 21. Balance After Reimbursements.

Where a valid mortgage of a plantation was made in Louisiana to secure advances of cash and supplies, to be made from time to time, for the purpose of working it, not



to exceed in amount \$25,000, to be reimbursed out of its products; and advances were made to exceed \$50,000, and reimbursements to an amount that, however, left a balance due exceeding \$25,000,

*Held*, The mortgage is good as security to its full amount, on any balance remaining on advances and reimbursements under it, and is not extinguished by the reimbursement of the first \$25,000. — *York v. Hoover*, vol. 3, p. 661.

## 22. Advances Less than Face of Note.

Where a mortgage for \$4,000 was given while only \$1,000 was advanced upon it, and was recorded in full—*prima facie* evidence of fraud,

*Held*, That out of the proceeds of sale of the property seized, the marshal pay over to the petitioning creditors, or their attorneys, the amount of their reasonable costs, expenses, etc., incurred in the proceedings in this matter, and that the balance be paid over to the mortgagee. — *In re Edward Dumont*, vol. 4, p. 17.

## 23. Past and Future Advances.

An insolvent trader may mortgage his stock and tools for present and future advances with the actual and honest intent to raise money to continue his business. *It seems*, that such a mortgage would not necessarily be fraudulent, though a part of the consideration were an existing debt.

Where the honest intent was clear and the mortgage was made for past as well as future advances, but mainly for the latter, and it appeared that the past advances were already secured upon property reasonably believed to be fully adequate, the mortgage was upheld although it turned out that the former security had not been quite sufficient. — *McKay v. Aldus*, vol. 7, p. 230.

## 24. Only Indemnity can be Recovered.

Where a mortgage was given to indemnify the mortgagee for his advances, and he lent his acceptances to the mortgagor, and after the bankruptcy of the latter bought up the paper at a discount,

*Held*, That he could charge against the mortgaged property only what he had paid in cash to take up the acceptances.

## 25. Change in Debtor's Circumstances.

Advances made in good faith while a mortgage is being prepared, and as part of

the money agreed to be secured by it, will be protected, though there should be a change of the debtor's circumstances after the money was advanced, and before the deed was delivered. — *Ex parte Ames, in re McKay & Aldus*, vol. 7, p. 230.

## III. Chattel Mortgage.

### 26. Remaining in Possession.

A, carrying on business, gave his sister a chattel mortgage upon his stock in trade. The mortgage was duly filed for record, but A retained possession of the mortgaged goods, continued business, and was subsequently adjudged a bankrupt.

*Held*, That the mortgagee had no title to the mortgaged goods paramount to that of other creditors. — *Manly*, vol. 3, p. 291.

### 27. Idem.

By statute, in Nevada, a chattel mortgage is void as to creditors unless immediate possession of the mortgaged property be taken and retained by the mortgagee, *erguendo*.

*That*, Independent of the statute, a mortgage of goods is fraudulent and void as to creditors, if the mortgagor is allowed to remain in possession and sell and traffic with them as his own. — *In re Morrill*, vol. 8, p. 117.

### 28. Idem—as Agent of Mortgagee.

Where mortgagors in such a mortgage had stipulated to retain possession of goods, to sell and dispose of them as agents of the mortgagee, a national bank,

*Held*, In an action brought by the assignee in bankruptcy to set the mortgage aside, and recover the amount of deposits made by the mortgagor with the mortgagee, that the mortgage debt would be extinguished by sales and deposits with the mortgagee, by the mortgagors in possession, and no recovery could be had.

Master appointed to examine and ascertain the amount of sale, with instructions to report a decree in favor of the mortgagee, if any deficiency should be found. — *Hawkins, Assignee, v. First National Bank of Hastings*, vol. 2, p. 337.

### 29. Restraining Sale Under.

Where the exercise of the power of sale contained in a chattel mortgage will injuriously affect the interest of the general creditors of a bankrupt, a court of equity



may restrain such a sale.—*Foster et al. v. Ames et al.*, vol. 2, p. 455.

### 30. Void as to Creditors.

A chattel mortgage void as against creditors under the State Law, and under which the mortgagee had taken possession, having at the time reasonable cause to believe his debtor insolvent, is also void as against the assignee in bankruptcy.—*Harvey v. Crane*, vol. 5, p. 218.

### 31. Execution of.

A chattel mortgage of a stock of goods executed by one co-partner under seal, and assented to by the other partner by parol, is valid, and is not invalidated by the fact that a seal is attached, as such mortgages are not required by the law to be under seal.

### 32. After-acquired Property—Articles Capable of Identification.

A mortgage is void as to the after-acquired property, but valid as to the fixtures and such portions of the stock as remains unsold and can be identified.—*Kahley et al.*, vol. 4, p. 378.

### 33. Power in Mortgagor to appropriate Proceeds.

In Wisconsin a clause in the mortgage giving the mortgagors the right to sell the stock and use the money as they might choose, would render the mortgage void as to the whole stock.—*Kahley et al.*, vol. 4, p. 378.

### 34. Additions.

When a mortgage is made, in Massachusetts, of an unfinished locomotive, the mortgagee will hold the additions afterwards made to the article by the mortgagor before his bankruptcy, by accretion; but a new mortgage of materials would not, *it seems*, give him the right to new articles manufactured from those materials.—*McKay & Aldus*, vol. 7, p. 230.

### 35. Trade Fixtures.

A chattel mortgage of machinery and other things, which would be trade fixtures as between landlord and tenant, will give the mortgagee a valid lien as against the assignee in bankruptcy, although as against a prior mortgagee of the realty the fixtures would be real estate, if it appears that such prior mortgagee makes no claim to the fixtures.—*McKay & Aldus*, vol. 7, p. 230.

### 36. Equity of Redemption.

Upon general principles of equity jurisprudence the mortgagor of chattels has an equity of redemption therein. The Statutes of Massachusetts which provide for a tender of performance, after condition broken, do not take away this right in equity, and it may be enforced in the Circuit Court of the United States, when that court has jurisdiction of the parties or the subject-matter, and this, without a previous tender of performance.—*Foster v. Ames*, vol. 2, p. 455.

## IV. By Corporations.

### 37. Ordinary Course of Business.

It is not out of the usual and ordinary course of business for a corporation engaged in manufacture, and which owns mortgages yet to become due, and desires to realize money thereon for use in its regular business, to sell such mortgages for their cash value. Hence a transfer made under such a state of circumstances will be adjudged valid, as against the assignee in bankruptcy.—*Judson v. Kelty et al.*, vol. 6, p. 165.

### 38. Idem—Railway Co.

*It seems* that a mortgage for money to pay debts ratably would not be an act of bankruptcy even in a trader.

Some distinctions between traders and railroad corporations, in respect to mortgaging their property, pointed out.

A railroad corporation giving a mortgage of its franchise, lands, and other property, to a trustee for the equal security, or payment, of all its unsecured creditors, does not thereby commit an act of bankruptcy within the 89th Section of the Bankrupt Act.

A mortgage by a railroad company to secure all its creditors equally out of its earnings, or to pay such as refuse the security their ratable proportion of the proceeds, is not an act of bankruptcy.

A common carrier is not a trader, hence a mortgage by a railroad company is not an act of unusual character: *i. e.*, out of the ordinary course of its business within the meaning of the Bankrupt Act.—*In re The Union Pacific R. R. Co.*, vol. 10, p. 178.

### V. Deficiency Under Mortgage.

#### 39. From General Fund.

An assignee cannot make up, out of the general funds of an estate, any difference between the net proceeds of the sale of the mortgaged property, and the amount stated by the mortgage to be due the mortgage creditors.—*In re Purcell & Robinson*, vol. 2, p. 22.

#### 40. Products of Premises.

Where a mortgagee fails to secure an equitable lien by bill and the appointment of a receiver on products or rents of mortgaged premises after a default, even though the premises sell for less than his claims at a sale by the mortgagor's assignee in bankruptcy, he will only be entitled to a *pro rata* share on the deficiency of his claim out of the bankrupt's assets. Products of the mortgaged premises reduced to possession by the mortgagor's assignee in bankruptcy, prior to sale of the mortgaged premises, are to be treated as assets to be distributed under the Bankrupt Act, and the mortgagee cannot claim that a deficiency after sale on his mortgage shall be paid in preference to the claims of other creditors.—*In re Snedaker*, vol. 4, p. 168.

#### 41. Intercepting Rents.

Where a mortgagee completes his foreclosure without intercepting the rents, he cannot afterwards, on finding the property insufficient, have the rents applied; whatever rights to intercept the rents he may have had ceased with the completion of the foreclosure.—*Foster v. Estate of Rhodes*, vol. 10, p. 523.

### VI. Exemptions.

#### 42. In Land Covered by Mortgage.

If a bankrupt does not chose to assert any claim to property that is exempted from execution under the law of the State where he resides, a mortgagee of that property cannot claim it as against the assignee in bankruptcy.—*Edmondson v. Hyde*, vol. 7, p. 1.

#### 43. Homestead cannot be Claimed in Land covered by Purchase Money Mortgage.

The bankrupt is not entitled to the exemption of a homestead out of land mortgaged by him at the time of its purchase,

to secure the payment of the purchase money, until the said mortgage is satisfied.—*In re Whitehead*, vol. 2, p. 599.

### VII. Foreclosure.

#### 44. Application for Leave to Foreclose.

A petition by a secured creditor for leave to foreclose his mortgage will be dismissed where no notice is shown to the court to have been given to the assignee of such application, and no proof made of the existence of the debt nor the amount.—*In re S. F. Frizelle*, vol. 5, p. 122.

#### 45. Idem.

In order to entitle a mortgagee to apply to the court for leave to foreclose his mortgage in another court, he must prove his debt in the Bankruptcy Court as a secured claim. The petition must allege this fact, the date and amount of the debt proved; the mortgaged property must be fully described, and it must be stated what other incumbrances there are upon the property, and, if there are any, they must be fully described. It must state the actual value of the mortgaged property; if the value is greater than the incumbrances it must be made to appear that the rights of the petitioner cannot be fully protected by a sale by the assignee under the bankruptcy proceedings.—*Sabin*, vol. 9, p. 383.

#### 46. When Leave will be Granted.

Mortgagees should not be permitted to pursue the estate of the bankrupt in the State courts, but should come to the tribunal which, under federal laws, is charged with its administration.

The purpose and intent of the bankrupt law is to bring the property of the bankrupt into the Bankrupt Court for administration, and that court is furnished with all needful power to liquidate and settle all liens thereon, and where there are adverse claims which it is not proper to litigate by summary enjoining and order, provision is made by giving jurisdiction to the District Court, permanently with the Circuit Court, for that purpose.

In certain cases mortgages upon the real estate of the bankrupt may be foreclosed in a State court, providing no objection is made, and where the assignee is satisfied that the mortgaged premises is of less value than the mortgage debt.

Where a foreclosure is pending at the time proceedings in bankruptcy are commenced, the validity of the mortgage and the amount due thereon may sometimes be settled in the State court, and then it is discretionary with the court in bankruptcy to permit a sale by decree of the State court or not.—*In re Brinkman*, vol. 7, p. 421.

#### 47. Staying Foreclosure.

An assignee in bankruptcy petitioned the Bankruptcy court to enjoin mortgagees from proceeding in the State court, commenced after the adjudication in bankruptcy, to have a receiver appointed, and to foreclose a mortgage on certain real property of the bankrupt in the possession of the assignee as assets; and asked that the mortgage might be declared void, the land sold free from incumbrance, and proceeds distributed.

*Held*, That the Bankruptcy court had jurisdiction, and that the proceeding by petition was regular. The mortgagees would be enjoined as prayed, until determination of the issue of the validity of the mortgage raised by the petition.—*In re The Kerosene Oil Company*, vol. 2, p. 528.

#### 48. Power to Foreclose not Within Summary Jurisdiction.

Jurisdiction to foreclose mortgages upon the estate of a bankrupt is not included in the powers to be exercised summarily under the first section of the Bankrupt Act, and more especially when the alleged mortgagee claims adversely to the assignee and to other mortgagees, and where the title of the applicant is denied, the amount claimed disputed, and it is insisted that if any lien ever existed it was released.—*In re Casey*, vol. 8, p. 71.

#### 49. Foreclosure Without Leave, a Nullity.

When a mortgagee proceeded in the State court, after petition in bankruptcy was filed by the mortgagor, with knowledge thereof, to foreclose his mortgage, without first obtaining the permission of the Bankrupt court,

*Held*, He was in contempt and the sale itself a nullity; by the filing of the petition all the property of the bankrupt is *eo instante* placed in custody of the Bankrupt

court.—*Phelps, Assignee, v. Sellick*, vol. 8, p. 390.

#### 50. Second Mortgagee.

A second mortgagee has no right, the first not interfering, to take possession of the premises against the assignee of the mortgagor for the purpose of foreclosure. He must apply to the Bankrupt court for relief.—*Hutchings, etc., v. Muzzy Iron Works*, vol. 8, p. 458.

#### 51. Sale under Power of Sale.

In States where a mortgage passes no title in the estate conveyed, but is a mere security for the debt, a trust-deed containing a power of sale does not couple to the power any interest, and although irrevocable by the grantor, is revoked by his bankruptcy or death; and a sale made under such power, after the adjudication of the grantor as a bankrupt, is void. The copartnership of which the trustee is a member cannot become purchasers at the sale of the property conveyed in the trust-deed.—*Lockett v. Hoge*, vol. 9, p. 167.

### VIII. Recording and Filing.

#### 52. Property in different States.

A business corporation made a mortgage for a present passing consideration, of goods and chattels, part of which were in the State of New York, and part in New Jersey. The mortgage was filed in the former, but not in the latter State.

*Held*, That the mortgage was valid and operative against creditors in New York, but not valid in New Jersey.

Reference ordered for the purpose of taking testimony to show what portions of the mortgaged property were severally in New York and New Jersey when the mortgage was delivered.—*In re The Soldiers' Business Messenger and Dispatch Company*, vol. 2, p. 519.

#### 53. Unrecorded Mortgage Valid against Assignee.

An unrecorded mortgage of personal property which has not been delivered to and retained by the mortgagee, is valid against the assignee in bankruptcy of the mortgagor.—*Griffiths*, vol. 3, p. 732.

#### 54. Within Four Months of Commencement of Proceedings.

A deed of trust executed December 8th, 1866, by a bankrupt who did not file his

petition till June 8th, 1867, was not recorded until March 2d, 1867.

*Held*, the recording (which was within four months previous to the commencement of bankruptcy proceedings) was not an act of bankruptcy, for the deed was operative from its date, and the act of the creditors in recording it cannot be construed as the act of the bankrupt.—*Charles H. Wynne*, vol. 4, p. 23.

#### 55. Prior Unrecorded Mortgage.

The United States District Court has no jurisdiction over a petition filed by a creditor of the bankrupt who claims the property by virtue of certain unrecorded mortgages and bills of sale of earlier date than that of a mortgage given to the wife of a bankrupt by a firm of which her husband was a member, to secure the payment of a promissory note given to her by the said firm.—*Barstow & Peckham et al.*, vol. 5, p. 72.

#### 56. Necessary to Preserve Lien.

A mortgagee of a chattel mortgage loses his lien if he neglects to have it acknowledged and recorded as required by the State statute. Even though possession of the property was taken before the commencement of proceedings in bankruptcy, and was in accordance with the provisions of the mortgage, it operates as a preference, and therefore void as against the other creditors, if done within the time limited by the present Bankrupt Act. The taking possession does not remit this creditor to his rights as of the date of his mortgage.—*Harvey v. Crane*, vol. 5, p. 218.

#### 57. In a State where there is no Statute upon the Subject.

A mortgage executed in a State having no statute on the subject of record, or if record is not required between the parties, will not be defeated by the proviso in the 14th Section of the United States Bankrupt Act of 1867 in relation to recording.—*In re Doir*, vol. 6, p. 10.

#### 58. As Affecting the Consideration.

Although a mortgage was recorded only the day before the petition in bankruptcy was filed, the evidence showed that the consideration did not pass until the mortgage was recorded.

*Held*, That the transaction was an inchoate one, not consummated until the mort-

gage was recorded, but still, in point of time, a unit; being marked by good faith, the consideration ought to be regarded as passing when the mortgage was recorded.—*In re Perrin & Hance*, vol. 7, p. 283.

#### 59. Mortgagors Residing in Different Places.

C and D, partners in trade, executed a chattel mortgage covering a portion of the firm property, conditioned to indemnify and save E harmless from all indorsements theretofore or thereafter made by him for the accommodation of C and D, with the usual power to take possession and sell in case of default, but with the express provision that, until default, the mortgaged property should remain in the possession of C and D. They retained possession of this property, dealing with it in all respects as their own, and selling portions of it in the usual course of their business, with the knowledge and consent of E, until he took possession of what remained. One of the mortgagors resided in Detroit, and the other in the township of Oscoda. The mortgage was not filed for a year and a half after it was given, and then only in Detroit.

At the time E took possession of the property in question, the insolvency of C and D was a notorious fact, and E knew that they were insolvent.

Bankruptcy proceedings were commenced shortly after the filing of the mortgage, and the assignee brought an action to recover the property sold by E, or its value.

*Held*, That in all cases where a chattel mortgage is given by more than one, and the mortgagors reside in Michigan, but in different townships or cities, the mortgage must be filed in each and every of the townships or cities in which any of the mortgagors reside, and a filing in one only of such townships or cities, or in any number less than all, is not a compliance with the statute, and is of no validity or effect whatever.

That the mortgage in this case not having been accompanied by an immediate delivery, and followed by an actual change of possession of the things mortgaged, and not having been filed in the township where one of the mortgagors resided, as re-

quired by law, the same was and is absolutely void as against the creditors of the mortgagors.

That the taking of possession by E before the commencement of the bankruptcy proceedings does not help his case, because the right of the creditors to attack the mortgage, for want of possession and filing, had attached before he took possession, and such possession cannot be referred to or based upon the mortgage; therefore E had no greater right to take possession of the property in question than any general and unsecured creditor, for security on his debt, nor did the consent of the debtors to his taking possession help the matter, because, the debtors being then insolvent to his knowledge, and the transaction being within the requisite limit as to time, it was clearly such a preference as by Section 35 of the Bankrupt Act conferred upon the assignee the right to recover the property or its value.—*Edward E. Kane, Assignee, v. Delos E. Rice*, vol. 10, p. 469.

#### IX. Rents and Profits.

##### 61. Received pending Foreclosure.

Products of mortgaged premises reduced to possession by mortgagor's assignee in bankruptcy, prior to sale of the premises, are to be treated as assets to be distributed under the Bankrupt Act, and the mortgagee cannot claim that a deficiency after sale on his mortgage shall be paid in preference to other claims.—*Snedaker*, vol. 4, p. 168.

##### 62. Application of Rent.

Where an assignee in bankruptcy receives the rents of mortgaged property, it must be distributed among the general creditors of the bankrupt. If the mortgagee desires it to be applied specifically to his lien, he must not only show the insufficiency of his security without the permanency of the rents and profits, but he must also intercept the rent before it can reach the assignee.—*Foster v. Estate of Rhodes*, vol. 10, p. 528.

#### X. Sale under Power of the Court.

##### 63. Creditor may Apply for.

A creditor who has a mortgage may apply to the Bankrupt Court to have the property covered by his lien sold, the proceeds to be applied to the payment of his debt. Should

the security fail to satisfy the claim, such creditor may be allowed to prove for the part remaining unpaid, and obtain a dividend thereon.—*In re Taylor R. Stewart*, vol. 1, p. 278.

##### 64. May be Made against Mortgagee's Claims to Right of Possession.

The District Court in bankruptcy may authorize the assignee to sell mortgaged property discharged of the incumbrances, and the mortgagees will then have their lien transferred to the proceeds of sale.

The power of the court to order such a sale on petition of the assignee, but may be exercised, notwithstanding the mortgagee asserts a right of immediate possession of the goods, and intends to bring, or does bring, an action for the recovery of possession.

Such a sale ought not to be ordered when the substantial rights of the mortgagee are to be thereby injuriously affected.—*Foster et al. v. Ames et al.*, vol. 2, p. 455.

##### 65. Assignee may Apply for.

The Circuit Court will entertain a bill by an assignee in bankruptcy against several mortgagors and other lien-holders to ascertain the amount due, and sell all the property free from incumbrances.—*Lake Superior Co.*, vol. 9, p. 298.

#### XI. Second Mortgage.

##### 66. Distribution of Lien.

The owner of a vessel became bankrupt and it was sold by proceedings in admiralty, but the amount realized was insufficient to pay the two mortgages against it.

*Held*, That the first mortgage, covering half the vessel, was to be treated as the first lien on one-half of the fund, and that such half must be regarded as composed of two separate funds or quarters, one subject to the first mortgage alone, and one subject first, to the first mortgage, and second, to the second mortgage, which covered three-fourths of the vessel; that the second mortgage was the first lien on the second half of the proceeds. One-fourth being more than sufficient to pay the first mortgage, the surplus passed to the assignee in bankruptcy, and the remaining three-fourths of the fund went to the payment of the second mortgage.—*In re Ship Edith*, vol. 6, p. 449.



**67. Possession of Premises Cannot be Taken.**

A second mortgage has no right, the first mortgagee not interfering, to take possession of the property covered by his mortgage and retain possession of the said premises against the assignee in bankruptcy of the mortgagor, for the purpose of foreclosure, or to enable him, the second mortgagee, to appropriate the rents and profits of the land towards the payment of the mortgage debt. His remedy is to apply to the Bankrupt Court for relief, which has exclusive jurisdiction over all the bankrupt's property.—*Hutchings et al., Assignees, v. Muzzy Iron Works*, vol. 8, p. 458.

**68. Merger.**

A second mortgage on the same and additional property to that covered by a first mortgage, to secure the same and additional debt as that secured by the first mortgage extinguishes the first mortgage, and the creditor cannot resort to the first mortgage, on the second being adjudged null because of violation of the Bankrupt Act.—*In re James Jordan*, vol. 9, p. 416.

**XII. Severance of Mortgage.****69. Cannot be Maintained in Part.**

Where a creditor, knowing of the embarrassment of his debtor, takes a mortgage to secure a pre-existing debt, and also a credit given at the time of the execution of the mortgage, the mortgage being void in part as to the pre-existing debt, must be held to be void as to the whole.—*C. D. Tuttle v. D. W. Truax, Assignee*, vol. 1, p. 601.

**70. Contra.**

A creditor advanced money to his debtor, within four months of proceedings in bankruptcy, and took a mortgage of the debtor's stock in trade, first, as security therefor; secondly, included in the same mortgage, another (antecedent) debt due to himself, which was secured by a prior mortgage on the same property, held by and given to the bankrupt's (debtor's) former copartner. The stock in trade was sold, with the consent of the several mortgagees, who proved their claims before the Register as secured debts, and joined with the assignee in submitting to the Register their rights under the mortgage. The Register held that the mortgage was void as against the assignee,

because intended to secure a pre-existing debt.

*Held*, On appeal by the mortgagee, that the mortgage could be severed and sustained in part, and denied as to the rest.—*In re Stowe, ex parte Godfrey*, vol. 6, p. 429.

**71. Idem.**

A mortgage covering "a stock of lumber and mouldings, and all renewals thereof from time to time," and other property, although void as to the lumber and mouldings, may still be valid as to the other property.—*Perrin & Hance*, vol. 7, p. 283.

**XIII. Upon Vessels.****72. Priority of Record.**

In the Bankrupt Court, mortgages on vessels, recorded under the Act of Congress of July, 1850, in the office of the Collector of Customs, in the home port, of a prior date shall receive a preference over the domestic claims.—*In re Dwight Scott*, vol. 3, p. 742.

**XIV. Miscellaneous.****73. Relation Back of Mortgage.**

A mortgage given to secure the payment of four promissory notes, made to raise means to work a plantation is valid, and, upon the negotiation of the notes, relates back to the date of execution.—*York & Hoover*, vol. 3, p. 661.

**74. Change in Substance of Deed.**

Where a security by way of mortgage is given more than four months before bankruptcy, a change in the former substance of the deeds made within four months of the bankruptcy, will be protected if no greater value were put into the creditor's hands at that time than he had before.—*Sawyer et al. v. Turpin et al.*, vol. 5, p. 339.

**75. Satisfaction of Mortgage.**

The taking possession of a vessel by the mortgagee, and his omission to sell her within a reasonable time, operates as a satisfaction of the debt for which she was mortgaged, to the extent of her value when the mortgagee took possession.—*In re Haake*, vol. 7, p. 61.

**76. Bona Fide Mortgage.**

Where a man makes a settlement upon his wife in fraud of his creditors, and his wife mortgages this property for value to one ignorant of the fraud, though the set-



tlement may be afterwards set aside, the mortgagee's rights will be protected—*Sedgwick, Assignee, v. Place et al.*, vol. 10, p. 28.

### 77. Seal Necessary.

A lien by way of mortgage can only be created by a deed under seal.—*The St. Helen's Mill Co.*, vol. 10, p. 415.

### 78. Merger of.

A being indebted to B executed to him a mortgage upon his entire stock of goods to secure the payment of the sum due him in one year. Two years afterward, the mortgage and interest having increased several hundred dollars, A gave B his note for the amount at thirty days, and executed another mortgage on the stock of goods then on hand, part of which consisted of the old stock and part of the new. This last mortgage was given within four months before the commencement of proceedings in bankruptcy, and the assignee claimed that A was insolvent at the time, took possession of the goods and sold them. B then presented proof of his claim as a secured debt and asks that the same be paid him out of the proceeds of the mortgaged property. The assignee asks that the proof of claim be rejected, and that B's application be denied.

*Held*, That upon taking the second mortgage the first ceased to have any validity or effect, and the mortgagee's rights as to lien must stand and be determined solely by the second mortgage; that the second mortgage was a preference to the mortgagee under Sections 35 and 39 of the Bankrupt Act; that B is absolutely prohibited from proving his debt against the bankrupt's estate.—*Jordon*, vol. 9, p. 416.

## MORTGAGOR.

See MORTGAGE,  
SURRENDER.

## MUTUAL DEBTS.

See CLAIMS,  
PURCHASE OF  
CLAIMS,  
STOCKHOLDER.

### 1. Services of General Assignee.

Insolvent firm made a general assignment for the benefit of all creditors, and F., their assignee, proceeded to dispose of

the property. On petition of creditors, the firm was adjudicated bankrupt in having committed an act of bankruptcy by making such assignment. The assignee in bankruptcy brought action against F. to recover the balance in his hands.

*Held*, The case is one of mutual credits between the bankrupts and F., and he is entitled to compensation for his services rendered in the premises, and may set off the amount allowed therefor against the claim of the assignee in bankruptcy.—*Catlin, Assignee, v. Foster*, vol. 3, p. 540.

### 2. Loss under Insurance Policy.

A claim for loss under an insurance policy may be set off by the insured against his indebtedness to the company.

Such claims constitute mutual debts or credits within the meaning of the 20th Section of the Bankrupt Act.

The rights of the parties are to be determined by the state of facts at the time of the loss.

Though such set off gives the complainant a preference, it results from the business relations of the parties as they stood at the time of the loss.

If his indebtedness is not due, and the company is bankrupt, a bill in equity will lie to establish the set off.—*Drake v. Rollo, Assignee, etc., of the Merchants' Insurance Company*, vol. 4, p. 689.

### 3. When Purchased with Notice of Insolvency.

It seems that a debtor to an insurance company might set off a claim purchased before the filing of the petition, in good faith and for value, if without notice of the insolvency of the company.

A court of equity should construe the 20th Section of the Bankrupt Act, in furtherance of the main purpose of the law, and not permit one creditor to inequitably obtain payment in full, to the sacrifice of the claims of the other creditors.

The language of that section does not foreclose a court of equity from disallowing a set off when it would work injustice.—*Hitchcock v. Rollo, Assignee, etc., of the Merchants' Insurance Company*, vol. 4, p. 691.

### 4. Banker, Proceeds of Securities with him.

A banker or his assignee, after petition

filed, has the right to collect securities left with him by a customer as collateral to his overdrafts, and apply the proceeds in liquidation of the account. It is in such case only the excess over the account that the customer has a right to demand.—*In re Bank of Madison*, vol. 9, p. 184.

#### 5. Individual and Partnership.

An insurance company in Chicago, at the time it became bankrupt by the great fire, held two promissory notes made by C., jointly with D., which the company had received from the payee in the regular course of business. C. and his brother, partners in business, suffered largely by this same fire in the destruction of buildings for which they held insurance in the said insurance company, whereby the company became indebted to them in a much larger sum than the amount of the promissory notes above mentioned.

C. filed a bill alleging that his just share of liability in the two notes is one-half, and desired to have that half extinguished by a set off of the like amount due on the policies, and alleging further that his brother assented to and authorized such appropriation.

*Held*, That there being neither mutual debts nor mutual credits this case does not come within terms of the bankrupt law.—*Gray v. Rollo*, vol. 9, p. 837.

#### NAME.

##### 1. Of Bankrupt.

The statement of a wrong middle letter of the bankrupt's name in the notice sent a creditor is not a material variance.—*Hill*, vol. 1, p. 16.

##### 2. Of Judge.

Petition not to be filed where name of judge is incorrect.—*Anonymous*, vol. 1, p. 216.

#### NATIONAL BANK.

See JURISDICTION.

##### 1. Interest.

The reservation of a greater rate of interest than six per cent. by a national bank, or discounting a promissory note, does not render the debt of the principal thereof, one not provable in bankruptcy.—*National Exchange Bank of Columbus*, vol. 1, p. 470.

##### 2. Idem.

A national bank located and doing business in the State of New York is therefore, in respect to its dealings with corporation borrowers, permitted only to take interest at the rate of seven per centum per annum, and the corporation borrower and its sureties may, in a State where no rate is fixed by law, interpose the defense of usury under the Federal statute, and avail itself of the forfeitures and penalties prescribed by the latter.—*Ocean National Bank v. Wild*, vol. 10, p. 568.

##### 3. Lien upon Shares of Stock.

A bank, organized according to the provisions of the 35th Section of the National Currency Act, has, in order to prevent loss upon a debt previously contracted, a lien upon the share of an individual stockholder, and can apply the same as well to the payment of individual as partnership indebtedness.—*Bigelow & Kellogg*, vol. 1, p. 667.

##### 4. Bankrupt Act does not Apply to.

The Bankrupt Act is not intended to apply to national banks, though possibly included in the words of the 37th Section, extending the provisions of the Bankrupt Act to all moneyed corporations. That the construction of that section must be limited by the general purpose and object of the Act, and so limited will exclude national banks, for the winding up of which, when insolvent, Congress has made special provisions.—*Smith et al. v. Manufacturers' National Bank*, vol. 9, p. 122.

#### NECESSARIES.

See EXEMPTION.

#### NEGOTIABLE PAPER.

See COMMERCIAL PAPER.

#### NEW PROMISE.

See EVIDENCE,  
LIABILITY.

##### 1. Entry on Schedule.

The entry of a debt upon the schedule by a bankrupt is not such an acknowledgment or new promise as will revive the debt.—*In re Daniel P. Kingsley*, vol. 1, p. 329.

**2. Must be Unequivocal.**

A debtor writing to his creditor after applying for the benefit of the Bankrupt Act, and while the proceedings were pending, used the following language in a letter to the creditor, after giving a statement of his affairs and the causes which led him to file his petition in bankruptcy: "Be satisfied; all will be right. I intend to pay all my just debts if money can be made out of hired labor. Security debt I cannot pay. All will be right betwixt me and my just creditors." Subsequently to the writing of this letter a discharge was granted.

*Held*, That the bankrupt having received his discharge from all his debts, the language used did not revive the debt; that the promise by which a discharged debt is revived must be clear, distinct, and unequivocal; that the letter produced does not contain a promise to pay this debt.—*Allen & Co. v. Ferguson*, vol. 9, p. 481.

**3. Pleading.**

Where a debt discharged in bankruptcy is revived by a new promise, the original debt should be set out as the cause of action and the new promise replied, when the plea of discharge in bankruptcy is filed.—*Benjamin G. Dusenbury v. Mark Hoyet*, vol. 10, p. 313.

## NEWSPAPERS.

**Owner's Name must Appear on Schedule.**

A bankrupt's schedules should be complete and definite; hence it is improper to designate debts owing to newspapers by their names, but in such case the owners of such papers should appear in the schedules or list of creditors.—*Anonymous*, vol. 2, p. 141.

## NEW TRIAL.

See APPEAL,  
JURISDICTION,  
REHEARING,  
REVIEW.

**District Court may Order.**

Where a debtor denied the alleged acts of bankruptcy, and demanded a jury trial, and upon such trial the jury found the facts alleged in the petition were untrue,

*Held*, The District Court has the same

power over verdicts rendered in such cases as courts of common law, and may, on proper cause shown, set them aside, and order a new trial.—*Forest*, vol. 9, p. 278.

## NON-RESIDENT CREDITOR.

See DEPOSITIONS.

## NON-SUIT.

See PLEADING,  
PRACTICE.

**1. Bankruptcy of Plaintiff.**

It is not a ground for non-suit that plaintiff has been adjudged a bankrupt since the suit was begun.—*Wooddail v. Austin & Holliday*, vol. 10, p. 545.

**2. Discharge of Defendant.**

If a discharge in bankruptcy be pleaded, the court cannot dismiss the cause on that ground, but must submit the issue to a jury.—*Austin v. Markham*, vol. 10, p. 548.

## NOTARY, PRIOR TO AMENDMENT OF 1874.

**Cannot Take Proof of Claim.**

Notaries are State officers, and responsible alone to them; and a creditor residing in another judicial district cannot make proof of his claim before them.—*In re Strauss*, vol. 2, p. 48.

## NOTES.

See COMMERCIAL  
PAPER.

## NOTICE.

See ADJOURNMENT,  
APPEAL,  
CLERKS,  
CREDITORS,  
DISCHARGE,  
DIVIDEND,  
INJUNCTION,  
MEETINGS,  
PETITION,  
SALE,  
SERVICE OF PAPERS,  
WAIVER,  
WRIT OF ERROR.

**1. Bankrupt's Name.**

The statement of a wrong middle letter of the bankrupt's name, in the notice sent to a creditor, is not a material variance.—*Hill*, vol. 1, p. 16.

## 2. Must Contain Exact Language of Warrant.

The exact language contained in the warrant should be copied by the messenger into the notices to creditors to be served and published, but the Register may disregard all immaterial variance, and omission in the notices of the former residence stated in the warrant held immaterial.—*Pulver*, vol. 1, p. 46.

## 3. Creditors Entitled to.

Every creditor is entitled to notice of the proceedings in bankruptcy. A notice not addressed to a creditor by his name is no notice at all. The error may be cured by issuing and serving a new and correct notice.—*Anonymous*, vol. 1, p. 122.

## 4. Non-Resident Creditors.

The Register fixed the day for the first meeting of creditors at sixty days after the date of the warrant, and directed notices to be mailed, postage paid, to the creditors, all of whom resided without the United States. The bankrupt objected that such creditors were to be notified constructively, and not by mail or personally, under Section 11.

*Held*, That the action of the Register was correct. The fixing of the time is a matter of discretion in the Register.—*In re Julius Heys*, vol. 1, p. 21.

## 5. Combination of.

Notice of the settlement of Register's charges, and finishing of bankrupt's examination, may be included in the notices for the hearing in court on the bankrupt's application for a discharge. If the business of the meeting before the Register is not finished, or the papers are not filed in the clerk's office before the day appointed for the hearing in court, weekly continuances are entered by the clerk, so that the notices may remain in force, and the time for entering opposition is, on the return of the papers, enlarged, for ten days from the next stated weekly session.—*Sherwood*, vol. 1, p. 344.

## 6. Failure to Apply for Discharge.

If the bankrupt does not apply for his discharge within three months from the date of adjudication, when there are no assets, the notice need say nothing about the second and third meeting of creditors.—*Anonymous*, vol. 2, p. 68.

## 7. Amendment of Schedules.

After schedules are amended, by adding new creditors, a new warrant should issue, to be served on the creditors whose names have been introduced by the amendment.

The notices should contain the names of all the creditors; if these have been properly published under the original warrant they need not be repeated.—*Perry*, vol. 1, p. 220.

## 8. To Bankrupt—Of Examination of Witness.

Where an examination of bankrupts by creditors had been commenced and adjourned over, and the assignee summoned a witness in the meantime for examination as to bankrupt's property, without notice to bankrupt,

*Held*, It was not necessary to give notice to bankrupts of time and place of examination of witness, and the same could be proceeded with without reference to the examination by creditors.—*In re Samuel W. Levy & Mark Levy*, vol. 1, p. 107.

## 9. Idem. Of Continuance of Proceedings.

Want of notice to a bankrupt is a formal objection well taken—as the bankrupt has an interest in the continuance of proceedings which may result in his discharge.—*Bush*, vol. 6, p. 179.

## 10. To be Mailed by Clerk.

The notices to creditors (Form 52) if sent by mail, must be mailed by the clerk, for which he has his fee by General Order 30.—*In re John Bellamy*, vol. 1, p. 96.

## 11. Idem.

It is the duty of the clerk to mail the notices of meetings of creditors.—*Townsend*, vol. 1, p. 217.

## 12. By Publication.—Application for Discharge.

If no creditors have proved their debts, and no assets have been received by the assignee at the time the bankrupt applies for his discharge, the only notice which can be given is by publication, at the discretion of the court.—*Anonymous*, vol. 1, p. 122.

## 13. Idem. Omission of.

An omission to publish notice of the first meeting of creditors to prove their debts, in one of the papers designated for that purpose, is a sufficient irregularity to set

aside the proceedings already had.—*Hall*, vol. 2, p. 193.

#### 14. *Idem*—Insufficiency of.

For first meeting the marshal returned that he had made first publication and mailed notices July 15th. The Register decided the notice insufficient and adjourned the day of meeting to August 8th following. On that day the marshal returned that he had sent notices by mail to creditors July 29th, but no further publication had been made.

*Held*, Both notices insufficient.—*Devlin & Hagan*, vol. 1, p. 35.

#### 15. *Idem*—Computation of Time.

Notice was first published on Friday, next time on following Monday, and third time on next succeeding Monday.

*Held*, Insufficient publication. Seven days must elapse between each publication and the proceeding dependent thereon, in order to publish "once a week for three successive weeks."—*John Bellamy*, vol. 1, p. 64.

#### 16. *Idem*.

Where a statute requires a notice to be published once a week for four weeks, in order to a strict compliance therewith, an interval of seven days must intervene between such publication. Hence a notice published on the 11th, 21st, and 27th days of January, and on the 1st and 10th days of February, does not comply with the terms of the statute, and any proceedings based on such publication, must fail on account of this irregularity.—*King & King*, vol. 7, p. 279.

#### 17. Of Pendency of Proceedings.

A debtor will be estopped pleading in bar, in a suit in a State court, a discharge in bankruptcy obtained *pendente lite*, where he fraudulently concealed from his creditor the pendency of the bankrupt proceedings, until after discharge granted and the creditor had no other notice of the pendency of such proceedings.—*Batchelder v. Low*, vol. 8, p. 571.

#### 18. Of Assignee's Demand.

An injunction order and proof of service is competent evidence that the debtor making payment had notice of the demand of the assignee.—*Babbitt v. Burgess*, vol. 7, p. 567.

#### 19. Of Fraud.

When it is sought to affect a second

vendee with fraud, such fraud must be shown, and the *mere fact*, without more, that he knew that the sale by the bankrupt to the first vendee embraced all the stock of the seller, will not make the purchase of the second vendee fraudulent in law.—*Babbitt, Assignee, v. Walbrun & Co.*, vol. 4, p. 121.

#### 20. *Idem*.

Where one partner fraudulently as to the other partner, gave notes in the name of the partnership for the payment of his individual contribution of capital, it was held that the accommodation indorser of said notes, who had paid them (although the partner making said notes, during the course of his conversation with the said indorser when procuring the indorsement, had represented that they were to be given for goods purchased by the partnership), was, nevertheless, under the peculiar circumstances of the case, taking into consideration the effect of the whole conversation, and of a previous interview some months before between said partner and said indorser, at which the former had stated that "he would perhaps want a favor," from the latter, or words to that effect, chargeable with notice of the fraudulent issue of the notes, and had no claim upon them against the *partnership* estate in bankruptcy.—*Dunkle & Dreisbach*, vol. 7, p. 107.

#### 21. *Idem*.

Notice to creditor of an act of bankruptcy does not affect a transfer to him, otherwise than as it tends to show that he had reason to believe that such transfer was made in fraud of the Bankrupt Act.—*Catlin v. Hoffman*, vol. 9, p. 342.

#### 22. Of Title.

A second purchaser takes the risk of the title of the first purchaser when informed of sufficient facts to put a prudent man on inquiry.—*Walbrun v. Babbitt, Assignee*, vol. 9, p. 1.

#### 23. Of Equities.

A was adjudged a bankrupt in October, 1868; prior to this time he had conveyed his homestead in trust to secure a debt.

This property was ordered to be sold by the Bankrupt Court, in satisfaction of the deed of trust, February 8th, 1869. On the 27th of February, the bankrupt and the

appellant made a contract about the rent of this property, and a note was given for the rent. The maker of the note, the appellant, became the purchaser of the property at the assignees' sale, April 9th, 1869.

*Held*, That the suit being brought by the assignee of a negotiable promissory note, against the maker, negotiated before maturity, the plaintiffs are not chargeable with notice of any rights or equities against the note, hence, appellees are entitled to their judgment.—*Maxwell v. McCune*, vol. 10, p. 307.

## NUNC PRO TUNC.

See AMENDMENT.

## OATH.

See ALIENS,  
BANKRUPT,  
PETITION,  
PROOF OF DEBT,  
REGISTER,  
SCHEDULE.

### 1. Before Whom Taken.

The oath of allegiance annexed to the debtor's petition may be taken before a Register.—*Walker*, vol. 1, p. 335.

### 2. Retaking.

Where a bankrupt's oath is made, as required by the 29th Section, and a creditor opposes discharge with specifications, but subsequently withdraws same,

*Held*, That the bankrupt should take and subscribe the oath after the withdrawal of the specifications.—*Machad*, vol. 2, p. 352.

### 3. Final Oath.

The Register is to certify conformity or non-conformity, on presentation to him by the bankrupt of the oath required by Section 29, and where there be specifications in opposition to the discharge, the Register may certify conformity except in the particulars covered by the specifications.—*Pulver*, vol. 2, p. 313.

## OMISSION FROM SCHEDULE.

See SCHEDULE.

## OPPOSING ADJUDICATION.

See ADJUDICATION.

### By Debtor.

On a petition for a compulsory decree adjudging the respondent a bankrupt, the

## OPPOSING DISCHARGE.

latter may deny that the petitioner is his creditor, may maintain such denial, overcome the *prima facie* proofs given by the petitioner, and the court must in that case dismiss the petition.—*Cornwall*, vol. 6, p. 305.

## OPPOSING DISCHARGE.

See DISCHARGE.

### 1. Amending Specifications.

Incomplete specifications in opposition to a discharge in bankruptcy, may be amended in due course.—*McIntire*, vol. 1, p. 436.

### 2. Without Proving Debt.

Any creditor of a bankrupt may oppose the discharge, whether he shall have proven his debt or not.—*Sheppard*, vol. 1, p. 439.

### 3. Extending time for.

The time to file objections can be kept open by adjourning any day which may be fixed for showing cause, until a reasonable time has elapsed for the examination of witnesses.—*Seckendorf*, vol. 1, p. 626.

### 4. Unsustained Specifications.

When the specifications filed in opposition to the discharge of a bankrupt are not sustained by the proofs, a discharge will be granted whenever the Register shall certify that the bankrupt has conformed to the requirements of the Bankrupt Law.—*Harris*, vol. 2, p. 105.

### 5. Fraudulent Debt.

An objection to the discharge of bankrupt, grounded upon the fact that the debt was created by fraud, is not a valid one.—*Bashford*, vol. 2, p. 73; *Clarke*, vol. 2, p. 110.

### 6. Servants' Wages.

Servants' wages paid after the passage of Bankrupt Act, as necessary family expenses, cannot be allowed as objection to discharge.—*Rosenfield, Jr.*, vol. 2, p. 117.

### 7. Is the Commencement of an Individual Proceeding.

The filing of an opposition to a bankrupt's discharge is the commencement of an individual proceeding on the part of the creditor against the bankrupt.—*Creditors v. Williams*, vol. 4, p. 580.



**8. After Suit Brought to Ascertain Amount Due.**

Where a creditor who prosecuted his debt merely to ascertain the amount due, proved his debt and afterwards obtained an unconditional judgment and took out execution, and appeared to oppose the discharge in bankruptcy, no one having moved to expunge his proof,

*Held*, He would be heard against the discharge on filing a stipulation to release his judgment if the discharge should be granted.—*Gallison et al.*, vol. 5, p. 358.

**ORDER.**

See ADJOURNMENT,  
CONTEMPT.

**1. Provisional.**

An order of arrest, injunction or seizure should not be granted without sufficient proof that the acts of bankruptcy charged have been committed.—*Leonard*, vol. 4, p. 563.

**2. May be Revoked.**

When necessary for the protection of the bankrupt's estate, or in furtherance of justice, an order once made may be revoked.—*Sampson v. Clark & Burton*, vol. 6, p. 403.

**3. Interlocutory.**

An order in a suit in equity for the foreclosure of mortgages as follows: "That a decree of foreclosure be made in favor of A on mortgages number one and three, and in favor of B on mortgage number two, and that the case be referred to the clerk of the said court to ascertain the sums due on said mortgages respectively," is only an *interlocutory* order and therefore cannot be appealed from.—*Casey*, vol. 8, p. 71.

**4. Order to Show Cause—When made by Register.**

In uncontested cases the order to show cause may be made by the Register if the Judge so directs specially or generally.—*John Bellamy*, vol. 1, p. 64.

**5. Idem—When Made by Court.**

An order upon a creditor who has proved his debt, to show cause why the proof of the debt should not be vacated, and the record cancelled, should be made by the court, and not by the Register.—*Comstock v. Wheeler*, vol. 2, p. 561.

**6. Idem—Not Granted upon Insufficient Proof.**

If there is not proof sufficient to make it appear that the acts of bankruptcy charged have been committed, no order on the defendant to show cause should be granted.—*Leonard*, vol. 4, p. 563.

**7. Idem—Void when Granted without Proofs.**

No order to show cause can legally issue against the debtor until proofs sustaining the petition are filed and a *prima facie* case made.

An order to show cause issued without such proofs is illegal and void, and does not constitute a commencement of proceedings in bankruptcy within the meaning of the Act.—*In re Davis Rogers*, vol. 10, p. 444.

**8. Idem. Service Outside District.**

The order to show cause, as required by Section 40 of the Bankrupt Act, may be served personally outside the district in which the petition is filed by any one authorized by the solicitor for the petitioner to make it. This rule is not altered where one or more of several partners file their petition in bankruptcy, in which several members of the partnership refuse to join; the parties so refusing may be proceeded against as involuntary bankrupts, and the order to show cause may be served on them outside the territorial jurisdiction of the court, and by a person duly authorized by the solicitor for the petitioner.—*Stuart, Assignee, v. Hines et al.*, vol. 6, p. 416.

**9. Idem—Dissolution of Corporation After Service of.**

A corporation dissolved by a decree of a State court before adjudication, but after the service of an order to show cause still exists for the purpose of being proceeded against in bankruptcy, as such dissolution does not deprive the District Court of its jurisdiction or abate the proceedings.—*Plutt, Assignee, v. Archer*, vol. 6, p. 465.

**10. Idem. To Cashier of Bank.**

A cashier is still an officer of the bank for the purpose of being served with an order to show cause, although he has given the keys to the receiver appointed by a State court, and has become his clerk and

ceases to act as cashier.—*Platt v. Archer*, vol. 6, p. 465.

#### 11. Idem. Response to.

Form 61 is a proper response to a rule to show cause, and entitles the defendant to a jury trial.—*In re Hawkeye Smelting Co.*, vol. 8, p. 385.

#### 12. Idem. Issued before Commencement of Proceedings.

Where the District Court, at the petition of the assignee, issued a rule to show cause against a stranger and the sheriff, who had seized the goods ten days prior to the commencement of proceedings in bankruptcy, to satisfy a lien for rent, on a provisional warrant of seizure, and upon the return of the rule delivered the goods to the assignee and had them sold,

*Held*, The order was null and void, and the assignee in bankruptcy acting under the order was a mere trespasser.—*Marshall v. Knox et al.*, vol. 8, p. 97.

### ORDINARY COURSE OF BUSINESS.

See EVIDENCE,  
FRAUDULENT TRANSFERS,  
NOTICE.

#### 1. Construction of.

The phrase "usual and ordinary course of business" refers to the course of business of the bankrupt not of the community.—*Rison v. Knapp*, vol. 4, p. 349.

#### 2. Sale out of, not Necessarily Void.

A sale made by a person contemplating bankruptcy is not *ipso facto* void; but if made without the usual course of trade, or is unusual in the time, or place, or price, or character, or quantity of the goods sold, such facts as against the vendee are held to be *prima facie* evidence of fraud in him.—*In re Josiah D. Hunt*, vol. 2, p. 539.

#### 3. Idem. Is Presumptively Fraudulent.

A sale of a stock of goods, not made in the usual and ordinary course of business of a debtor, is *prima facie* evidence of fraud by Section 35 of the Statute.—*Dean & Garrett*, vol. 2, p. 89.

#### 4. Idem.

Where assignees in bankruptcy impeached a transaction involving a transfer by the bankrupts of a mortgage and promissory notes to holders of their cheque, if it be shown to have been made out of the

ordinary course of business, it is *prima facie* evidence of fraud, and the burden of proof is cast upon the defendant to show the validity of the transaction.—*Collins & Farrington, Assignee, v. Bell et al.*, vol. 3, p. 587.

#### 5. Idem.

A sale of property by the bankrupt, out of the usual and ordinary course of business, is presumptively fraudulent, but this presumption may be rebutted by evidence *aliunde*, to be produced by the vendee.—*Babbitt v. Walbrun & Co.*, vol. 4, p. 121.

#### 6. Idem. Void where Purchaser has Knowledge of Insolvency.

Where a sale was made out of the "ordinary course of business," and the purchaser had good reason to believe that the bankrupts were insolvent at the time, it is void under the Bankrupt Act.—*Kahley et al.*, vol. 4, p. 378.

#### 7. Idem. Followed by Suspension.

A trader gave promissory notes in part payment of purchases of goods, and before they fell due, sold out the balance of his stock in gross, without invoice, at ten o'clock at night, to a purchaser for ten hundred and thirty-two dollars cash, and went out of business, after paying one of the notes before maturity. He failed to pay the other notes at maturity, and they remained unpaid for more than fourteen days.

*Held*, It was no defense that the debtor had ceased to be a trader at the period of suspension. The sale for cash was not a sale made in the ordinary course of business. The suspension of payment of his paper was fraudulent, and he must be adjudicated a bankrupt.—*Davis & Green v. Armstrong*, vol. 3, p. 34.

#### 8. Idem. Of Mortgage by Corporation.

It is not "out of the usual and ordinary course of business," for a corporation engaged in manufacture and which owns mortgages yet to become due, and desires to realize money thereon for use in its regular business, to sell such mortgages for their cash value. Hence a transfer made under such a state of circumstances will be adjudged valid as against the assignee in bankruptcy.—*Judson v. Kelty et al.*, vol. 6, p. 165.

**9. Securing Debt.**

Where a transaction that contemplates the securing of a debt is out of the ordinary course of business, the Bankrupt Act declares it to be *prima facie* fraudulent, and the *onus* of showing that it is not so, is cast upon the defendant.—*Martin, Assignee, etc., v. Toof, Phillips & Co.*, vol. 4, p. 488.

**10. Conveyance.**

A conveyance not made in the usual and ordinary course of business of a debtor is *prima facie* fraudulent and void.—*Rison, etc., v. Knapp*, vol. 4, p. 349.

**11. Mortgage.**

Where a stock of goods, which had been mortgaged, were taken possession of by the assignee, and were sold by order of court, and the money held subject to its order, the mortgagee claiming it by petition, and the assignee opposing on the ground that the mortgage was voidable under 2d clause of 33d Section of the Bankrupt Act, the mortgagor being a trader, and the loan being made out of the ordinary course of business within four months of the mortgagee's bankruptcy,

*Held*, That the mortgagee's petition must be dismissed, for the reason that it was out of the ordinary course of business, the mortgagor being a retail dealer, a mortgage of the whole of his stock was a confession of insolvency. If made directly to the creditor, it would be an act of bankruptcy, and here both parties seemed to have considered it injurious to the mortgagor's credit, and agreed that it should not be recorded until some necessity should arise therefor.—*Butler*, vol. 4, p. 303.

**12. Idem. By Railway Company.**

A common carrier is not a trader, and a mortgage by a railroad company is not an act of unusual character, *i. e.*, out of the ordinary course of its business within the meaning of the Bankrupt Act.—*In re The Union Pacific R. R. Co.*, vol. 10, p. 178.

**13. Using all Assets for Payment of One Debt.**

If the debtors were unable to pay the debt to Iselin & Co., in the ordinary course of business, when the sheriff levied them they were insolvent. It is not in the ordinary course of business to take all available means to pay one debt, leaving insuffi-

cient assets to meet other debts as they become due.—*Dibble et al.*, vol. 2, p. 617.

**14. Inability to Pay Debts in, is Insolvency.**

A trader is in insolvent circumstances when he is not in a condition to pay his debts in the ordinary course of business, as persons carrying on trade usually do.—*In re Gay*, vol. 2, p. 358.

**15. Idem.**

Merchants not able to pay off their debts in the usual and ordinary course of business, as persons carrying on trade usually do, are insolvent within the meaning of the Bankrupt Act of 1867.—*Louis & Rosenheim* vol. 2, p. 449.

**16. Idem.**

A merchant or trader who cannot pay his debts in the ordinary course of business is insolvent.—*Wilson v. Brinkman*, vol. 2, p. 468.

**17. Idem.**

A trader is insolvent within the meaning of the 35th Section of the present Bankrupt Act when he is unable to pay his debts as they mature in the ordinary course of his business, and not merely when his liabilities exceed his assets.—*Sawyer et al. v. Turpin et al.*, vol. 5, p. 339.

**18. Idem.**

By insolvency, as used in the Bankrupt Act when applied to traders and merchants, is meant inability of a party to pay his debts as they become due in the ordinary course of business.—*Toof et al. v. Martin*, vol. 6, p. 49.

**PARTIES.**

See ASSIGNEE,  
CONTEMPT,  
COST,  
JURISDICTION,  
PARTNERS,  
SERVICE OF PAPERS,  
WITNESS.

**PARTIES—**

- I. *Attachment*, p. 518.
- II. *Adjudication*, p. 518.
- III. *Appeal*, p. 518.
- IV. *Conversion*, p. 518.
- V. *Incumbrance*, p. 518.
- VI. *Injunction*, p. 518.
- VII. *Partners*, p. 519.
- VIII. *Petition*, p. 519.
- IX. *State Commissioners*, p. 519.

I. *Attachment.*1. **Assignee Made Party to Dissolve.**

Where there was an attachment pending in the Georgia Superior Court against A, who was declared a bankrupt, and his assignee was appointed under the laws of the United States,

*Held*, That the assignee may be made a party to the attachment, and that it was proper, on his motion, to declare the attachment dissolved by the bankruptcy.—*Kent & Co. v. L. T. Downing, Assignee*, vol. 10, p. 538.

II. *Adjudication.*2. **Outside Creditor Seeking to Annul.**

The application of creditors other than the petitioning creditor in a bankruptcy proceeding for an order annulling the adjudication on the ground that there was an agreement of compromise preceding the commencement of bankruptcy proceedings, to which agreement the petitioning creditor was a party, must be denied.

The proceeding by a petitioning creditor to force his debtor into bankruptcy is a proceeding *inter partes* like an ordinary action at law or suit in equity, and until the adjudication is had, they are the only parties. No outside creditor has a right to resist the adjudication or to ask that it be annulled.—*Bush*, vol. 6, p. 179.

III. *Appeal.*3. **From Joint Judgment.**

Where there has been a joint decree against two parties, and one alone asks for an appeal, it will be dismissed, unless it appears by the record that the other party had been notified in writing to appear, and that he had failed to appear, or had refused to join.—*Masterson, etc., v. Howard*, vol. 5, p. 130.

IV. *Conversion of Property.*4. **Assignee Applying to be Made Party.**

Motion by assignee to be made a party to actions brought to recover possession of certain tobacco alleged to have been wrongfully taken and converted by defendant, afterwards declared bankrupt,

*Held*, The assignee should show some right to the property in controversy, in order to make him a party. Such conversion by his principal is of itself not a good reason for supposing he has right to the property in question.—*W. Gunther et al. v. Greenfield et al.*, vol. 3, p. 730.

V. *Incumbrance.*5. **On Bill to Foreclosure, Prior Incumbrancers Necessary Parties.**

To a bill by a junior mortgagee against a mortgagor or his assignee in bankruptcy, prior incumbrancers are necessary parties where there is substantial doubt as to the amounts which are due them, or the property covered by their liens.—*Sutherland et al. v. Lake Superior Ship Canal, Railroad, & Iron Co. et al.*, vol. 9, p. 299.

6. **Judgment Creditor.**

A creditor who has obtained judgment is not a necessary party in a suit between the assignee in bankruptcy and a subsequent judgment creditor.—*Traders' National Bank of Chicago v. Campbell, Assignee*, vol. 6, p. 353.

7. **Assignee in Foreclosure.**

A petition by a secured creditor for leave to foreclose his mortgage, will be dismissed where no notice is shown to the court to have been given to the assignee of such application, and no proof made of the existence of the debt nor the amount.—*Friszelle*, vol. 5, p. 122.

VI. *Injunction.*8. **Person Enjoined not a Party to the Bankruptcy.**

A. was adjudicated a bankrupt on the petition of creditors. Some time thereafter the brother of the bankrupt filed his petition, alleging that the bankrupt died before the adjudication; that the petitioner had been served with an injunction restraining him from interfering with or disposing of the property of the said bankrupt.

*Held*, That there was no party to a creditor's petition except the petitioning creditor and the bankrupt; that the service of an injunction on any person or any number of persons, did not make them parties to

the proceedings, although any one served might, by petition or on motion, have a wrongful injunction dissolved; this, however, did not give him the right to contest or vacate the adjudication, that being a matter in which he could have no interest.—*Karr v. Whittaker et al.*, vol. 5, p. 123.

### VII. Partners.

#### 9. On Separate Petition of Copartner.

It is not necessary in an individual petition, there being no partnership assets, to make the other partners parties to the proceedings, or to have them brought in under General Order No. 18.—*Abbe*, vol. 2, p. 75.

#### 10. Retired.

It appearing that a third party had been a partner at the time certain partnership debts were contracted, and that the members thereof were bankrupt jointly and individually, it was

*Held*, That no proceedings could be had, in the petition or petitions, until the third partner joined or was brought in by proper notice.—*Prankard & Prankard*, vol. 1, p. 297.

### VIII. Petition.

#### 11. Separate Petitioners.

Where several petitioners join in the petition in separate and distinct rights, each stands as a separate and distinct party to the litigation so far as the right in which he prosecutes is concerned, and a verification by or on behalf of each petitioner, is required.—*Simmons*, vol. 10, p. 254.

#### 12. Prior to Adjudication.

Until adjudication, the only parties to the proceedings are the petitioning creditors and the debtor.—*Camden Rolling Mill Co.*, vol. 8, p. 590.

#### 13. Motion to Dismiss by Outside Creditor.

A motion on the part of a creditor who is not a party to the petition, that the proceedings on the petitions for adjudication be dismissed, must be denied on the ground that the denials of bankruptcy by debtors are questions solely between the petitioning creditors and the debtors, with which no outside party, sustaining merely the re-

lation of a person who claims to be a creditor of the debtors, can be permitted to interfere.—*In re Boston, Hartford & Erie R. Co.*, vol. 5, p. 232.

### IX. State Commissioners.

#### 14. Under State Insolvent Law.

A petition to review and reverse an adjudication of bankruptcy was filed in the United States Circuit Court by commissioners appointed under State law, for the purpose of liquidating the affairs of a bank. The defendants to the petition of review except on the ground that the commissioners are not the legal representatives of the bank. The court decided that the petition of review must be dismissed at the costs of the commissioners, and that the judgment whereby the bank was adjudged bankrupt be affirmed, and that the injunction heretofore granted be rescinded and revoked.—*Thornhill et al. v. Bank of Louisiana*, vol. 5, p. 367.

#### 15. Misjoinder of Parties only by the Parties Improperly Joined.

The objection to a misjoinder of parties can be made only by those who are improperly joined.—*Spaulding, Assignee, v. Govern*, vol. 10, p. 188.

### PARTNERSHIP.

See ACT OF BANKRUPTCY,  
ADJUDICATION,  
ASSETS,  
ASSIGNEE,  
CONCEALMENT,  
CREDITORS,  
DISCHARGE,  
DISTRIBUTION,  
EXEMPTION,  
FRAUD,  
HUSBAND AND WIFE,  
MARSHALING ASSETS,  
MUTUAL DEBTS,  
PETITION,  
PLEADING,  
RESIDENCE,  
SCHEDULES.

## PARTNERSHIP—

- I. *Adjudication*, p. 520.
- II. *Assets*, p. 520.
- III. *Death*, p. 521.
- IV. *Discharge*, p. 521.
- V. *Dissolution*, p. 521.
- VI. *Dividends*, p. 522.
- VII. *Exemptions*, p. 523.
- VIII. *Fraud*, p. 523.
- IX. *Husband and Wife*, p. 524.
- X. *Individual*, p. 525.
- XI. *Joint Obligors*, p. 525.
- XII. *Marshaling Assets*, p. 525.
- XIII. *Partners*, p. 525.
- XIV. *Priority*, p. 528.
- XV. *Request*, p. 528.
- XVI. *Suspension of Payment*, p. 528.
- XVII. *Surviving Copartner*, p. 528.
- XVIII. *Schedule*, p. 529.
- XIX. *Transfer*, p. 529.
- XX. *Voting for Assignee*, p. 529.
- XXI. *Will*, p. 529.

I. *Adjudication*.1. **Against One only on Joint Debt.**

An adjudication of bankruptcy may be made against one partner only upon a joint debt. The partnership creditor has such an interest in the separate property of any one of the partners, that he may proceed against one alone.—*In re Melick*, vol. 4, p. 97.

2. **After Prior Adjudication of Copartner.**

A firm may be declared bankrupts although one of its members may have already been adjudicated on a creditor's petition.—*Hunt, Tillinghast & Co. v. Pooke & Steere*, vol. 5, p. 161.

3. **On Application of Assignee of one Member.**

Bankrupt was a member of two copartnerships, and, without notice to his other copartners, filed his individual petition in voluntary bankruptcy, showing in his schedules assets and liabilities of the two firms. He was adjudicated a bankrupt individually, and assignees were appointed who petitioned that the court adjudge the two firms respectively bankrupt, as being insolvent, in order to the administration of their assets in the Bankruptcy Court.

The remaining copartners answered, denying the commission of any act of bankruptcy by either firm and demanded a trial by jury.

*Held*, The assignees had properly instituted and could maintain the said proceedings. The bankrupt could not be properly discharged, unless the assets of the insolvent firms should be so administered. If the respondents denied the insolvency of the firms, jury trial would be granted; but, not being denied, the said firms would be respectively adjudged bankrupt.—*In re Grady, Bankrupt; Wm. T. Shumate & A. Blythe, Assignees, v. David O. Hawthorne; same v. David O. Hawthorne & Sidney H. Turbyfill*, vol. 3, p. 227.

II. *Assets*.4. **Of Individual Purchase with Partnership Credit.**

Where there are both individual and partnership creditors of a bankrupt, but the assets are individual only, though mainly consisting of goods purchased by the bankrupt from the partnership on its dissolution prior to the bankruptcy, and being principally the same goods, in the purchase of which the partnership debts had originated; the partnership creditors will be entitled to be paid *pari passu* with the individual creditors.—*Jewett*, vol. 1, p. 491.

5. **Assignee of Individual not Entitled to Recover Copartnership Property fraudulently Transferred.**

The assignee in bankruptcy of the individual partner, has no title to call upon the other assignee, or any one else, to account for partnership property transferred by the retiring partner, and subsequently assigned, and his petition must be dismissed. In order to reach the partnership property through the Bankruptcy Court, all the copartners must first be adjudicated bankrupt.—*Shepard*, vol. 3, p. 172.

6. **Copartnership Assignee Takes both Joint and Separate Property.**

An assignee of a bankrupt firm takes by his assignment all the property of the firm and of the individual members thereof, even though part of the property may be out of the district in which the bankrupts reside, and owned in part by partners who have not been joined in the bankruptcy



proceedings.—*Leland & Leland*, vol. 5, p. 222.

#### 7. Partnership Assets to Partnership Creditors.

Partnership assets must be administered according to the 36th Section of the Bankrupt Act and likewise the assets of the separate estate of bankrupt.—*Frear*, vol. 1, p. 660.

#### 8. No Assets Full Discharge on Individual Petition.

Where a member of a late copartnership files his individual petition under the Bankrupt Act, and inserts in his schedules, debts contracted by said copartnership, and there are no copartnership assets to be administered, he will be entitled to be discharged from all his debts, individual as well as copartnership. It is not necessary in such a case to make the other partners parties to the proceedings, or to have them brought in under General Order 18.—*In re Little*, 1 N. B. R. 74 quarto, and *In re Frear, Id.*, 204, commented upon *In re Warren C. Abbe*, vol. 2, p. 75.

### III. Death.

#### 9. Not Legal Cause for Dismissing Petition.

The decease of one partner prior to any adjudication upon the question of bankruptcy, is not legal cause for dismissing the petition.—*Hunt, Tillinghast & Co. v. Pooke & Steere*, vol. 5, p. 161.

#### 10. Partnership Estate in the Hands of Executor.

Where one of the partners has died and under the statute of the State the partnership property is placed in the hands of the personal representative of the deceased partner to be administered, the Court in Bankruptcy will not, on a petition against the surviving partners, take the estate out of the hands of the administrator.—*In re Daggett*, vol. 8, p. 237.

### IV. Discharge.

#### 11. When Firm must be Declared Bankrupt before Member can be Discharged.

Where a member of an existing firm has filed an individual petition in bankruptcy where there are firm debts and firm assets, the firm must be declared bankrupt before

a member thereof can be discharged from its liabilities. This applies only to copartnerships actually existing, or where there are assets belonging to the firm.—*In re Winkens*, vol. 2, p. 349.

#### 12. To Individual Member of Several Firms.

A discharge properly granted to the individual members of a firm will be available in respect to any indebtedness of any other partnership in which they were interested, and for whose debts they might be liable. The creditors of the several partnerships are entitled to preference of payment out of the assets of the firm to which they respectively gave credit.—*Warren & Charles Leland*, vol. 5, p. 222.

### V. Dissolution.

#### 13. May be Adjudicated while there are Assets.

A mere formal dissolution of the partnership while there are assets, etc., will not prevent the operation of the act upon the partners either in a voluntary or involuntary case.—*In re Crockett et al.*, vol. 2, p. 208.

#### 14. Suspension of Commercial Paper after Dissolution.

Firm dissolved, with written agreement that one member should assume and pay its obligations, including outstanding commercial paper. Payment thereof was suspended, and was not resumed in fourteen days.

*Held*, That such suspension was an act of bankruptcy, and the firm must be adjudicated bankrupts. It is unnecessary to allege or prove fraud in such suspension, where payment is not resumed within a period of fourteen days, 1 N. B. R., 181.—*Weitekert & Parker*, vol. 3, p. 27.

#### 15. After Dissolution.

Though a firm be dissolved, it may still exist *quoad* the creditors, under Section 36, and the several members may be adjudged bankrupt on petition of one, in a proper case, without the consent of the others.—*Foster & Pratt*, vol. 3, p. 237.

#### 16. While Joint Debts Remain.

So long as joint debts of a firm remain outstanding and unsettled, proceedings in bankruptcy, whether voluntary or invol-

untary, may be joint.—*In re Granville Williams & Andrew Williams*, vol. 3, p. 286.

#### 17. Petition after Sale of Interest.

A copartnership existing between H. and R. was terminated by R. assigning and transferring all his interest as copartner to a third party. H. subsequently filed petition that the firm, and each of its members, be adjudged bankrupt.

*Held*, The prayer of the petition must be denied as to the firm and as to R., inasmuch as the case is not within the provisions of Section 36 of the act, and H. and R. were not copartners, and no property of the said copartnership, as such, existed at the time said petition was filed.—*Hartough*, vol. 3, p. 422.

#### 18. After Dissolution by two Remaining Partners.

A firm, originally composed of three members, was dissolved by the withdrawal of one. The two remaining members, constituting a new firm, subsequently filed their petition in bankruptcy. Upon objection being made by the member of the firm who had withdrawn, it was

*Held*, That the court has jurisdiction of the petition of the two parties, though the firm may have been composed of three.—*Mitchell et al.*, vol. 3, p. 441.

#### 19. While Debts Remain or Assets are Undistributed.

For the purposes of petitioning, a partnership is to be held to subsist so long as there are outstanding debts against the firm or assets undistributed belonging to it.—*Hunt, Tillinghast & Co. v. Pooke & Steere*, vol. 5, p. 161.

#### 20. Petition Filed Irrespective of.

A petition in bankruptcy can still be filed against the members of the dissolved firm, as though there had never been any dissolution.—*In re H. C. McFarland & Co.*, vol. 10, p. 381.

#### 21. Acting as Copartners after Expiration of Articles.

A partnership dissolved by mutual consent can have no effect upon the rights of creditors then existing nor upon those who subsequently became creditors, if the members of the firm continued to treat each other in point of fact as partners after the alleged dissolution, and to act as such in

their business transactions with others.—*In re H. C. McFarland & Co.*, vol. 10, p. 381.

#### 22. While Assets are Held by a Receiver at the Instance of one Copartner.

After proceedings have been commenced in a State court, by one of the members of a copartnership, to put an end to the partnership, and for an account, and the property is in the hands of a receiver, it is competent for another member of the firm to file a petition in bankruptcy, to leave himself and the firm adjudged bankrupt.—*In re Noonan*, vol. 10, p. 330.

#### 23. Adjudication against, Operates as a Dissolution.

An adjudication of bankruptcy against a copartnership operates in all cases as a dissolution, and thereafter it ceases to exist; hence, there being no firm in existence to receive the exemption allowed by the Bankrupt Law, nothing could be set apart as exempt property to the bankrupts as a firm.

Under the statutes of Michigan, the individual members of a firm are not entitled to a separate exemption of \$250 out of the undivided partnership property.—*In re Blodgett & Sanford*, vol. 10, p. 145.

#### 24. Notes given by Liquidating Copartner.

Notes given by a solvent partner, after the dissolution of the firm, to one of the creditors who had assisted in starting and dissolving the firm, and by way of settlement, will not be considered as the commercial paper of such partner, he not being by business a merchant, and having entered into the partnership to benefit a relative, and closing it up as soon as it was discovered to be unprofitable.—*Weater*, vol. 9, p. 132.

### VI. Dividends.

#### 25. Joint and Several Creditor from both Estates.

A creditor, the obligee of a joint and several bond, given by the members of a copartnership, is entitled to dividends out of the several assets of the individual bankrupts, members of the firm; the firm, and its several members, having been adjudged bankrupts.—*In re Edward Bigelow, David Bigelow, and Nathan Kellogg*, vol. 2, p. 371.

**26. Idem. Creditor Entitled to Dividends from Joint and Personal Estate.**

A creditor who holds the note of a co-partnership consisting of three members endorsed by one of them for part of his debt and also three notes, each made by one of the copartners and indorsed by the two copartners other than its maker, and who proves his debt against the makers of the notes only, is entitled to dividends out of the several estates, joint or separate, against which the proofs were made. The copartnership in this case were accommodation makers or indorsers for the copartnership, which, as between the copartners, and in equity, was the principal debtor. — *Mead, Assignee, v. National Bank of Fayetteville*, vol. 2, p. 173.

**27. Partnership Note Indorsed by Individual Member.**

Where a creditor holds the note of a copartnership indorsed by one of its members, he may prove in bankruptcy against the copartnership fund, and also against the separate estate of the copartner indorsing, and he may elect out of which funds he may be paid. He may collect dividends from both funds. — *Stephenson v. Jackson, Assignee*, vol. 9, p. 255.

**28. No Partnership Assets or Solvent Copartner.**

It is a well-established fact in England and in the United States, that where there are partnership and individual debts, and there are no partnership assets and no solvent partner, the debts of the firm and of the individual member can be proved, and the estate is to be distributed *pari passu* among the creditors. — *In re Knight*, vol. 8, 436.

**29. Having Lien on Two Funds may Elect.**

Section 36 of the Bankrupt Act only applies to distribution of partnership and individual assets remaining after the satisfaction of liens thereon. And a creditor of a partnership having a lien on both the partnership and individual assets of the members may resort to either fund for payment, at his option, unless there are creditors having liens only on the individual fund, when the equitable rule as to two funds will apply, and the partnership creditor must first exhaust the partnership fund. — *In re Lewis*, vol. 8, p. 546.

**30. Firm Assets Subject to Firm Debts.**

Where a member of a co-partnership, upon the dissolution of the firm, receives the firm assets and agrees to pay the firm debts, on the subsequent bankruptcy of the firm, the firm creditors may, at their election, prove as separate creditors of the estate of the liquidating copartner, and share *pari passu* with the individual creditors. — *Long & Co.*, vol. 9, p. 227.

**VII. Exemptions.**

**31. Individual, not Entitled out of Partnership Assets.**

The individual members of a bankrupt firm in Pennsylvania, have no right to any of the partnership assets as exempt property; either under the United States Bankrupt Law of 1867, or the law of that State. — *Hafer & Brothers*, vol. 1, p. 547.

**32. Idem.**

An exemption in accordance with the provisions of the 14th Section of the present Bankrupt Act, cannot be allowed to an individual partner out of the partnership estate, as such exemption can only be allowed in case there is a surplus after paying the partnership creditors. — *Price & Price*, vol. 6, p. 400.

**33. Contra.**

The individual members of a commercial firm are entitled to have the exemptions allowed them by the Bankrupt Act set apart to them out of the firm assets where the individual assets of each copartner is not sufficient. — *In re McKeicher & Pettigrew*, vol. 8, p. 409.

**VIII. Fraud.**

**34. Notes Issued in Firm Name for Separate Debt.**

Where several notes had been fraudulently given by one partner in the name of the firm for his separate debt, and the partner defrauded, upon learning of the issue of two only of said notes, by an agreement of dissolution of the partnership, purchased from his copartner his interest in the firm for a certain sum of money payable by appropriation of portion thereof to the payment of the said two notes, and the balance on or before a certain stipulated time, and the partnership was subsequently adjudged

bankrupt, but any claim against the partnership estate, upon any of the notes fraudulently issued was disallowed, it was

*Held*, That the effect of the said agreement of dissolution, as to the said two notes referred to therein, was not a ratification of the said notes by the defrauded partner as firm obligations, but an assumption of them as his separate debts upon a consideration which had not failed in whole or in part, the claims upon said two notes remaining also separate debts of the partner who had issued them.—*In re Dunkle v. Dreisbach*, vol. 7, p. 107.

### 35. *Idem*.

A note given in an individual transaction of one of the bankrupts and in no manner for the benefit of the firm, though signed in the firm name, is not provable in bankruptcy against the joint estate.—*Forsyth & Murtha*, vol. 7, p. 174.

### 36. Articles for Individual Use Paid for out of Firm Assets.

An agreement to sell an individual certain specific articles expressly for his individual use and consumption, to be paid for out of the partnership goods of the firm, is void as to the other partners. Such an arrangement, made without the knowledge, assent, or approval of his copartners, is therefore fraudulent and void as to them.—*Taylor v. Rasch & Bernart*, vol. 5, p. 899.

### 37. *Contra*.

Notes drawn by one partner in the firm name, apparently in the course of partnership business, without *mala fides* or actual knowledge by the holder of want of authority or intended misapplication, entitle the holder to their allowance against the bankrupt estate of the firm.

A, a member of a partnership, offered B, for indorsement, his individual notes, representing, however, that they were to be used for purposes of the firm. B refusing to indorse the same, A, at B's suggestion, substituted the firm notes, which B indorsed, and subsequently paid and became their holder.

*Held*, That although it appeared that the notes, after said indorsement, were used by A to pay his separate indebtedness, and in fraud of his copartners, B might recover against the firm, there being

no evidence of bad faith or actual knowledge by him of the intended fraud.—*Bush v. Crawford, Assignee*, vol. 7, p. 299.

### 38. Act of Bankruptcy of one Copartner.

A conveyance by one copartner of his individual property, contrary to the provisions of the Bankrupt Act, though made with intent to hinder the copartnership creditors, is not an act of bankruptcy of the copartnership, but only of the individual member.—*Redmond & Martin*, vol. 9, p. 408.

## IX. Husband and Wife.

### 39. May be Adjudged Bankrupt.

The common law that a married woman could not enter into a copartnership or make any valid contract has been much relaxed, and the rule in equity now seems to be that she may hold, control and dispose of her separate property, incur liabilities on the strength of it, and that it may be subjected to the payment of her debts contracted in or about the management, improvement, or purchase of such property.

When a man and his wife hold themselves out to the world as partners in trade, it will be presumed, in the absence of proof, that she contributed her share of the capital, and that her time, skill and savings went into the business.

When, in such case, the firm became bankrupt, the partnership creditors are entitled to be paid in preference to individual creditors of the husband out of the partnership assets.

Such a partnership can be adjudged bankrupt, and, it seems, the wife may also individually be adjudged bankrupt.—*Kinkead*, vol. 7, p. 439.

### 40. Where Bankrupt was in fact Member of Firm.

Where the wife of a bankrupt had, with her own money, bought out the interest of a retiring member of an insurance broker's firm, which employed the bankrupt ostensibly as clerk, at a percentage of profits in lieu of a salary, and the shares of the wife and the bankrupt did not exceed the fair remuneration of the bankrupt for his services to the firm, which he was mainly instrumental in building up and conducting, the annual profits whereof were thirty thousand dollars,

*Held*, That the bankrupt was virtually a partner, and swore falsely when he stated in his schedules that he had no assets. Fraud is scarcely ever made out by direct evidence, hence the proof must be generally arrived at by the inter-weaving of circumstances. Discharge refused.—*In re Rathbone*, vol. 2, p. 260.

#### X. Individual.

##### 41. Consideration Passing to Firm.

Where the original consideration of a claim passed to a partnership, but the obligations given for the same were executed by the individual members of the firm as such,

*Held*, That the creditors holding such obligations are entitled to a credit out of the individual estates. — *In re Bucyrus Machine Co.*, vol. 5, p. 303.

#### XI. Joint Obligors.

##### 42. Cannot have each other Adjudicated.

S., a member of a dissolved copartnership, filed petition against the other member, W., in involuntary bankruptcy, stating that there had been no settlement between them, and claiming that the alleged bankrupt was indebted to the petitioner by reason of the partnership transactions, for assets and money of the partnership that had come to the said W. over and above his share thereof, and otherwise, in the sum of seven thousand dollars.

*Held*, That S. is not entitled to an adjudication of bankruptcy against W. upon the facts.

S. is not entitled to prove a debt against W. in respect to bonds and mortgages given by himself and W. jointly.

Such petition cannot be maintained by S. upon a contingent debt or contingent liability.—*Sigsby & Willis*, vol. 3, p. 208.

##### 43. Where one of Bankrupts Member of Outside Firm.

B. & G. were, at the time of their bankruptcy, indebted to the firm of G. & F. G. was a member of both firms. F. offered to prove the debt of his firm as the remaining or surviving partner having the right to wind up its affairs.

*Held*, That the debt should be admitted to proof.—*Buckhause & Gough*, vol. 10, p. 206.

##### 44. Overdrafts by Copartners.

No proof can be made in bankruptcy between the joint and separate estates, in respect either of money drawn out without fraud by one partner, or of goods sold to him by the firm, though he was to sell them again.—*In re C. H. Boynton*, vol. 10, p. 135.

##### 45. In case of Joint Venture.

Two firms shared in a certain venture, and kept an account at bank in the name of one firm, adding the word "Co.," and so signed the cheques.

*Held*, That these cheques did not establish a copartnership between the two firms, and that the holder of one of the cheques thus signed could not file a petition in bankruptcy against the members of both firms.—*Warner et al.*, vol. 7, p. 47.

#### XII. Marshaling Assets.

##### 46. Between Firm and Separate Creditors.

Under the Bankrupt Act (Section 36), assets are to be marshaled between the firm creditors and the separate creditors of the partners only when there are firm and separate assets, and proceedings are instituted against the firm and the individual members, as provided in that section.

Where a partnership has been dissolved, and one of the copartners purchases *all* of the assets of the firm, and agrees to pay all of the debts, and both partners subsequently become bankrupt, and are individually put into bankruptcy, so that there is no solvent partner and no firm property,

*Held*, Under the Bankrupt Act of 1867, that the creditors of the firm, as well as the individual creditors of the partner who assumed to pay the firm debts, were entitled to share, *pari passu*, in the estate of such partner.—*Downing*, vol. 3, p. 748.

#### XIII. Partners.

##### 47. Salary Measured by Net Profits.

An agreement to give and take a salary, to be measured by the net profits received, does not create a partnership—the distinction stated between a salary measured by the profits and a share of the profits as such.

No partnership *inter sese* can exist unless with the intention of the parties.—*In re Pierson*, vol. 10, p. 107.



**48. Petition Filed by One in Name of Firm after Adjudication of the Other.**

Where one of two partners files a petition in the name of the firm, setting forth the fact that the other partner had already filed a petition in bankruptcy, an order may be granted that he have leave to join in the proceedings heretofore taken; but proceedings in regard to his individual creditors will take place under the second petition. Thus, such partner will receive a discharge under his own petition, and so far as the second petition is a petition for the adjudication of the firm, it may be disregarded except as indicating assent to join in the first petition.—*In re P. & H. Lewis*, vol. 1, p. 239.

**49. Bringing in Copartners after Adjudication.**

A bankrupt may amend his petition after adjudication, so as to bring in his copartner in order to obtain a discharge of copartnership as well as individual debts.—*Little*, vol. 1, p. 841.

**50. Two or more Adjudicated on Petition of One.**

Two or more partners may be adjudged bankrupts upon the petition of one or more of them.—*Crockett*, vol. 2, p. 208.

**51. Service on those Residing outside the District.**

The order to show cause, as required by Section 40 of the Bankrupt Act, may be served personally outside the district in which the petition is filed by any one authorized by the solicitor for the petitioner to make it. This rule is not altered where one or more of several partners file their petition in bankruptcy, in which several members of the partnership refuse to join. The parties so refusing may be proceeded against as involuntary bankrupts, and the order to show cause may be served on them outside the territorial jurisdiction of the court and by a person duly authorized by the solicitor for the petitioner.—*Stuart, Assignee, v. Hines et al.*, vol. 6, p. 416.

**52. Participation in Profit of Business.**

Participation in the profits of a business is presumptive or primary proof that the participator is a partner in such business, and in the absence of other proof is suffi-

cient evidence thereof; but such presumption may be overcome by showing that such profits were received by the party simply as wages for services performed, or interest for money loaned to the person carrying on such business.—*In re Francis & Buchanan*, vol. 7, p. 859.

**53. Option to Share in Profits.**

A was an experienced merchant, without means. B and C each had some money which they were willing to risk in a mercantile enterprise, but did not intend to render themselves liable for the debts of the concern, should it prove unsuccessful. B and C advanced the money to purchase the stock of merchandise, the business to be carried on in A's name, giving B and C the option to share in the profits, if successful, and if not, then to receive back the amount advanced with ten per cent. interest.

*Held*, That B and C did not have such an interest in the business as to render them liable as partners, within the meaning of the Bankrupt Act, the evidence showing there was never an election, on the part of B and C, to share in the profits, and a partnership *inter se* was never entered into.—*Moore et al., v. Walton et al.*, vol. 9, p. 402.

**54. May Waive Rule Preferring Partnership Debts.**

The rule that prefers partnership property to the payment of partnership debts is for the benefit of the partners, and they may waive it.

The partners in this case did waive it by giving their notes and mortgage upon the partnership property, to secure them, notwithstanding that the debts for which the notes were given were individual debts.—*Kahley et al.*, vol. 4, p. 378.

**55. Cannot Represent Partnership Claims.**

*Semble*, A member of a bankrupt firm cannot represent claims against the estate.—*Mittledorfer & Co.*, vol. 8, p. 39.

**56. One may Execute Power of Attorney for Firm.**

One member of a firm or copartnership, on behalf of the firm, may execute a power of attorney to some third person, authorizing him to cast the vote of the firm in the choice of assignees.—*In re Barrett*, vol. 2, p. 533.



**57. Petition by One Partner against Another.**

A petition by one partner against another is *quasi in invitum*, and the objecting partner may show that the firm is not insolvent; though, in such a case, if creditors intervened, perhaps the court might require security to be given for the payment of the joint debts before dismissing the petition. —*In re James L. Fowler*, vol. 1, p. 680.

**58. Assignee of Individual cannot Avoid Fraudulent Preference of Firm.**

Where the members of a firm which is insolvent make a conveyance of all their joint personal property to creditors who have reasonable cause to believe the firm to be insolvent, and within four months thereafter one of the firm is adjudged a bankrupt on his own petition, the conveyance to such creditors by all the partners does not constitute a preference which the assignee of the bankrupt partner can avoid. *Forsaith*, vol. 3 p. 48.

**59. Petition Filed in Place of Residence.**

A petition was filed by two partners, one of whom neither resided nor carried on business in the district where the petition was filed.

*Held*, That such partner must file his petition where he resided.—*In re Francis T. Prankard and William C. Prankard*, vol. 1, p. 297.

**60. Former Partner a Necessary Party if the Firm Debt was Contracted while he was a Member.**

It appearing that a third party had been a partner at the time certain copartnership debts were contracted, and that the members thereof were bankrupt, jointly and individually, it was

*Held*, That no proceedings could be had in the petition or petitions until the third partner joined or was brought in by proper notice.—*Prankard & Prankard*, vol. 1, p. 297.

**61. Proving Claim against ex-Member of Partnership.**

Where one who was a member of a late firm files his individual petition in bankruptcy, all his creditors can prove their claims whether individual or partnership. —*Frear*, vol. 1, p. 660.

**62. Residing in Different Districts.**

Where one member of a firm files his petition in one State and requests his copartners to join him in the proceedings, which they refuse to do, but subsequently appear by attorney and consent to an adjudication, whereupon all the members of the firm are adjudicated bankrupt, and upon the application for the discharge of the bankrupts, specifications are filed in opposition to their discharge on the ground of a want of jurisdiction,

*Held*, That Section 36, taken in connection with Section 11, supplemented by General Order 18, should be construed together. Section 36 provides that "if such copartners (that is copartners in trade who are sought to be adjudged bankrupts on the petition of themselves or any one of them or any creditor of theirs) reside in different districts, that court in which the petition is first filed shall retain exclusive jurisdiction over the case." The court which first obtains jurisdiction over the subject-matter of the petition and over the person of the petitioner, shall have exclusive jurisdiction over the case; that is, over the subject-matter of the petition, and over all the copartners if the non-petitioning copartners be brought in by appropriate process. Objections to jurisdiction over ruled.—*Penn et al.*, vol. 5, p. 80.

**63. Partner Retiring but Permitting Name to be Used.**

Where a partner retired from a firm, but permitted his name to remain for the benefit of the other partners, he was held liable to persons who bought the note of the new firm in ignorance of the dissolution, and in reliance, in part, on his name. —*In re Kreuger et al.*, vol. 5, p. 439.

**64. Business Carried on in Name of Active Partner.**

Where a firm consisting of two partners carries on business in the name of the active partner, a promissory note given by him to the silent partner, for the amount of capital contributed by the latter to the joint stock, is the separate act of the active partner.—*In re Walter H. Waite et al.*, vol. 1, p. 373.

**65. Secret Partner.**

Where the purchaser of a note did not know that there were any secret partners

with the persons whose names appeared upon its face, and for whose individual benefit it was given, and placed the proceeds to the credit of the holder, the secret partners would not be liable.—*Munn*, vol. 7, p. 468.

#### 66. Transfers into Sese.

A *bona fide* transfer of partnership effects by one member of the partnership to another vests the title in the transferee as his separate estate.—*In re Owen Byrne*, vol. 1, p. 464.

#### 67. Idem.

A transfer of firm property from one member of the firm to another is not an Act of Bankruptcy within Section 39 of the Act.

Such a transfer is not a fraud on the creditors of the firm, nor does it hinder or delay them or constitute a preference contrary to the provisions of the Act.—*Munn*, vol. 7, p. 468.

#### 68. Idem, with Fraudulent Intent.

A transferred his interest in partnership effects to his copartner B, on the 2d of October, on his (B's) promise to pay the firm debts, without buying any new stock or making any effort to continue the business. B filed his petition in bankruptcy on the 7th of October.

*Held*, That the transfer was accepted by B in contemplation of filing his petition in bankruptcy, and that the transfer was void as a fraud on the creditors of the partnership.—*Byrne*, vol. 1, p. 464.

### XIV. Priority.

#### 69. Surety to United States.

Where individual members of a copartnership signed internal revenue tobaccoists bonds as accommodation sureties, and the firm subsequently being adjudged bankrupt, the collectors of internal revenue, holding the bonds the conditions of which had been broken, proved the debts thereon in bankruptcy, and claimed payment out of the partnership assets by priority of distribution to the United States,

*Held*, That the debts were individual debts, and the claim of the United States to prior payment out of partnership assets was not valid but it would be good against individual assets.—*In re Webb & Johnson*, vol. 2, p. 614.

### XV. Request.

#### 70. By Firm for Benefit of Individual.

A joint request made by the individual members of a firm soliciting B to become a surety of one of them in an administration-bond, does not create a liability of the firm. Hence upon the firm being subsequently declared bankrupt, B has no debt due therefrom, which is recoverable at law.—*Forsyth v. Woods, Assignee*, vol. 5, p. 78.

### XVI. Suspension of Payment.

#### 71. Of Commercial Paper by Secret Partner.

A secret partner who allows the paper of the firm, of which he is a member, to remain unpaid for fourteen days, though entirely solvent, and having committed no other act of bankruptcy, may be adjudged a bankrupt under a petition filed against the two partners.—*In re Ess & Clarendon*, vol. 7, p. 133.

### XVII. Surviving Copartner.

#### 72. Adjudicated on Petition of Firm Creditor.

A petition was filed by a creditor of the late firm of S. & Co., charging an act of bankruptcy by S. as surviving partner, and praying that he be adjudged a bankrupt, as an individual and as such surviving partner. To this petition objections in the nature of a demurrer were interposed, on the ground that the Court has no authority to administer upon the joint estate, unless the firm be declared bankrupt, and that this cannot be done because it has been dissolved by the death of one of its partners, and because it is admitted that the estate of the deceased partner is amply sufficient to satisfy all his debts, both individual and joint. Further, that a bankrupt cannot be discharged from partnership debts, unless the other partners are brought in and the firm adjudged bankrupt, and that inasmuch as the alleged act of bankruptcy was committed in respect of a partnership debt, and the petitioning creditor is a creditor of the firm, debtor cannot be adjudged a bankrupt in his individual capacity. Demurrer overruled, adjudication granted and a warrant issued to the messenger directing him to seize the separate estate as well as the estate of the firm in the hands of the bankrupt.—*R. Stevens*, vol. 5, p. 112.

XVIII. *Schedule.***73. Failure of one Member to File.**

Where a member of a bankrupt firm had failed to file schedule of his personal property,

*Held*, The other members would not, on that account, be refused a discharge.—*Schofield*, vol. 3, p. 551.

XIX. *Transfer.***74. By Copartners into esse to Create Preference.**

Where such a firm, being insolvent, and known by the partners to be so, is dissolved, and the silent partner conveys all his interest in the joint property to the active partner, who on the same day, and as part of the same transaction, mortgages the whole stock in trade to secure the pre-existing debt of a separate creditor of each partner, and neither partner had any separate estate,

*Held*, This transaction is fraudulent, in the sense of the Bankrupt Law, as a preference; and both partners are liable to be adjudged bankrupt on the petition of a joint creditor, seasonably filed.—*Waite*, vol. 1, p. 373.

XX. *Voting for Assignee.***75. Partnership Creditors alone Elect Assignee.**

In cases where copartners are adjudged bankrupts, the partnership creditors only can participate in the election of assignees. The assignees must be elected by the majority in number and value of the creditors who have proved their debts, and not by the greater part of those present and voting. The election of the assignee, or the appointment by the Register, in cases where no election is made by the creditors, must be approved by the Judge; and until approval, the assignee has no power to act.—*In re Scheiffer & Garrett*, vol. 2, p. 591.

**76. Idem.**

Creditors who have proved a debt against a partner of a firm in bankruptcy, have no right to participate in the election of an assignee for the company, who must be chosen by the creditors of the company only.—*In re Phelps, Caldwell & Co.*, vol. 1, p. 525.

XXI. *Will.***77. Carrying on Business under.**

A, B, C, and D were partners. C died leaving a will, by the terms of which his interest in the copartnership was to be continued, and appointing D his executor. Several years thereafter D also died, but without a will. The surviving partners declined to give the bond necessary for them to retain possession of the partnership estate, and one M. gave the required bond, became the administrator according to the laws of the State, and took possession of the partnership estate. Subsequently a creditor of the firm filed a petition in bankruptcy against the firm.

On appeal,

*Held*, That the District Court properly refused to grant the order to show cause, for the reason that the Probate Court of the State had first obtained jurisdiction and had the right to continue and also to retain possession of the partnership effects.—*Daggett*, vol. 8, p. 433.

## PAYMENT.

See ACT OF BANKRUPTCY,  
CLAIM,  
DIVIDEND,  
DISCHARGE,  
INFLUENCING PRO-  
CEEDINGS,  
PREFERENCE,  
PRIORITY,  
SECURED CREDITOR,  
WAGES,  
PURCHASE OF CLAIMS.

## PAYMENT—

- I. *After Act of Bankruptcy*, p. 530.
- II. *After Petition Filed*, p. 530.
- III. *Confederate Bonds*, p. 530.
- IV. *Indorser*, p. 530.
- V. *Four Months*, p. 530.
- VI. *Gold*, p. 530.
- VII. *Illegal*, p. 531.
- VIII. *Petitioning Creditor*, p. 531.
- IX. *Struggling to Keep up*, p. 531.

### I. *After Act of Bankruptcy.*

#### 1 With Knowledge of, Prior to Filing Petition.

A payment made by a debtor to a creditor who has committed an act of bankruptcy, and against whom proceedings in bankruptcy have been instituted and are pending, but who has not yet been adjudged a bankrupt, will not be valid in the event of an adjudication of bankruptcy in such proceedings if the payment transpired subsequent to the filing of the petition therein.

Payment made by a debtor to a creditor who is known to have committed an act of bankruptcy, but against whom proceedings have not at the time been taken, is valid in so far as it is affected by existing bankrupt laws.—*Opinion Attorney-General*, vol. 9, p. 117.

### II. *After Petition Filed.*

#### 2. With a View to Defeat Act.

Payments made to a debtor after a petition in bankruptcy has been filed against him with a view of defeating the Bankrupt Act in any of its essential requirements, are void, and the persons by whom such payments are made can be held to answer for the original demand of the assignee, whose title relates back to the date of the commencement of proceedings in bankruptcy.—*Babbitt v. Burgess*, vol. 7, p. 561.

#### 3. Made Bona Fide without Notice.

Payment to a bankrupt *bona fide* made, and without actual notice, after the commencement of proceedings, is not valid.—*Mays v. Manufacturers' National Bank of Philadelphia*, vol. 4, p. 660.

#### 4. Into Court of Petitioning Creditor's Claim.

In the case of an involuntary proceeding in bankruptcy, the payment into court by the debtor of the amount due the petitioner, in pursuance of a previous tender, cannot defeat the petition, it not being proper for the petitioner, when the debtor is insolvent, to accept payment in full at the expense of other creditors.—*Williams*, vol. 3, p. 286.

### III. *Confederate Bonds.*

#### 5. Accepted as Payment.

The plaintiff, at various times prior to

and on the 16th day of June, 1862, had made deposits with the Bank of North Carolina. On the 13th day of March, 1864, his account with the bank was made up, and the sum of \$5,253.69 ascertained to be due to him. On that day he drew and delivered to the bank his cheque, in the usual form, for the full sum due to him, and accepted in part payment for the cheque five coupon bonds, issued by the State of North Carolina, on the 1st day of January, 1863, which were issued in aid of the rebellion.

*Held*, That such bonds, when accepted by a creditor in payment of his debt, and while they are of value as a medium in the money markets, constitute a valid medium for the payment of a debt, provided the contract or engagement in which they are used was not a contract made in aid of the rebellion.—*Wm. H. Holleman v. Chas. Dewey*, vol. 7, p. 269.

### IV. *Indorser.*

#### 6. To Holder of Note with a Solvent Indorser.

A payment by an insolvent, which would otherwise be void as a preference under Sections 35 and 39 of the Bankrupt Law, is not excepted out of that provision because it was made to a holder of his note overdue, on which there was a solvent indorser, whose liability was already fixed by protest and notice.—*Bartholow, Lexis & Perry, v. Bean, etc.*, vol. 10, p. 241.

### V. *Four Months.*

#### 7. To Creditor is Valid.

A payment by a debtor who is in insolvent circumstances more than four months before the filing of the petition by or against him, although made to the creditor by way of preference, will be sustained against the assignee under the provision of the first clause of the 35th Section of the Bankrupt Act of 1867.—*Maurer, Assignee v. Frantz*, vol. 4, p. 431.

### VI. *Gold.*

#### 8. Judgment for Coin.

A decree that payment should be made in gold coin is just and proper in a State where all business transactions are based on coin values; and, if the value had been

found in currency, the amount would have been increased so as to equal the value as actually found in coin; hence the defendant is in no way injured by the judgment for coin.—*Edmondson v. Hyde, Assignee*, vol. 7, p. 1.

VII. *Illegal.*

9. **Not mere Change in Form.**

The payments the law makes void are those which reduce the means of the debtor to pay his debts ratably; a change in the form of his own obligation from an account to a note, although indorsed, could not have that effect, and works no wrong to the other creditors.—*Edward O'Connor v. Williard Parker et al.*, vol. 4, p. 718.

VIII. *Petitioning Creditor.*

10. **Reducing below Jurisdictional Amount.**

Payments made by the debtor to the petitioning creditors are material facts on the issue in denial of bankruptcy, and the debtor can introduce evidence of such payments without a special traverse of the amount of his indebtedness.

The receipt of such payments by the petitioning creditors to an amount sufficient to reduce this indebtedness below the minimum established by the act, must be considered as a waiver of the alleged act of bankruptcy.—*In re Skilley*, vol. 5, p. 214.

11. **Part Payment.**

The receipt by a creditor of part of his claim does not preclude him from petitioning to have his debtor adjudged a bankrupt, if the creditor offers to bring this payment into the registry of the court.—*Murcer*, vol. 6, p. 851.

IX. *Struggling to Keep up.*

12. **Honest Efforts to Continue Business.**

Although insolvency exists, yet, if the debtor honestly believes he shall be able to go on in his business, and with such a belief pays a just debt without a design to give a preference, such payment is not fraudulent, although bankruptcy should subsequently ensue.—*Gregg*, vol. 4, p. 456.

13. **Idem.**

A bankrupt who makes payments in the

course of his business with the *bona fide* expectation that he can keep along without going into bankruptcy, there being no actual design to favor and prefer, is not thereby deprived of his right to a discharge, if otherwise entitled to it, under the provisions of Section 29 of the Bankrupt Act.—*Brent*, vol. 8, p. 444.

PENALTIES.

See CONCEALMENT,  
COURTS,  
DISCHARGE,  
FRAUD,  
GAMING,  
JURISDICTION,  
MISDEMEANOR.

1. **Proving Debts Created by Fraud does not Stay.**

So much of Section 21 as imposes a penalty for proving a debt cannot be construed as applying to a debt which, according to the provisions of Section 33, is not dischargeable.—*Rosenberg*, vol. 2, p. 236.

2. **Right to Avoid Preferences.**

The right of recovery of property transferred by an insolvent, given by Section 35 of the Bankrupt Act to the assignee, is in no sense a penalty. The transfer and title are simply declared void, hence the vesting of the title in the assignee.—*Cook et al.*, vol. 9, p. 155.

PENDING SUIT.

See ACTION,  
ASSIGNEE,  
ATTACHMENT,  
COURTS,  
PARTIES,  
PROOF OF DEBT,  
UNLIQUIDATED  
DAMAGES.

1. **Assignee Discharged without Interfering.**

A suit was commenced by plaintiff prior to filing a petition in bankruptcy. After the petition was filed the proceedings in bankruptcy were superseded by arrangement, under Section 43. The trustees completed their trust, filed their final accounts, and were discharged. Nothing had been done in the original suit; but after the discharge of the trustees the defendants plead

## 532 PERISHABLE PROPERTY.

the bankruptcy of plaintiff as a bar to his further prosecution of the suit.

*Held*, Under the peculiar facts in this case, the plea must be overruled.—*Conner v. S. Exp. Co.*, vol. 9, p. 138.

## PERISHABLE PROPERTY.

See ASSIGNEE,  
COURTS,  
SALE.

### 1. Possession by Court before Sale.

Sale of perishable property for benefit of all concerned, cannot be ordered until it is in the possession of the marshal as messenger.—*Metzler & Cowperthwaite*, vol. 1, p. 89.

### 2. Assignee must Apply to Court for Leave to Sell.

An assignee desiring to sell property as perishable or because the title is in dispute, must apply to the court by petition, and not to a Register.—*In re Graves*, vol. 1, p. 237.

## PETITION.

See ADJUDICATION,  
AMENDMENT,  
ASSIGNEE,  
COST AND FEES,  
CREDITOR,  
DISCONTINUED PROCEEDINGS,  
DISCHARGE,  
INJUNCTION,  
JURISDICTION,  
NOTICE,  
OATH,  
PARTIES,  
PRIORITY,  
PROCEEDINGS IN BANKRUPTCY,  
REVIEW,  
SUMMARY PROCEEDINGS.

## PETITION—

- I. *Amount Due*, p. 532.
- II. *Amendment*, 1874, p. 532.
- III. *Corporation*, p. 534.
- IV. *Cost*, p. 534.
- V. *Foreclosure*, p. 535.
- VI. *Illegible*, p. 535.
- VII. *Injunction*, p. 535.
- VIII. *Intervention*, p. 535.
- IX. *Parties*, p. 535.

## PETITION.

- X. *Pleading*, p. 535.
- XI. *Proportion of Creditors*, p. 535.
- XII. *Second Petition*, p. 535.
- XIII. *Secured Debt*, p. 536.
- XIV. *Signing*, p. 536.
- XV. *Verification*, p. 536.

### I. *Amount Due*.

#### 1. Counter Claims.

Where the alleged bankrupt has counter claims against the petitioning creditor, of such a nature as are provable in bankruptcy, and the amount so provable will reduce the petitioning creditor's claim below two hundred and fifty dollars, the petition will be dismissed.—*Osage Val. Railroad*, vol. 9, p. 281.

#### 2. Provable in Bankruptcy.

If the debts are provable under the Act, they are such as the Act contemplates as sufficient on which to base a bankruptcy petition.—*Alex. R. Linn v. Smith*, vol. 4, p. 46.

### II. *Amendment*, 1874.

#### 3. Allegation of Proportion of Creditors.

In petitions pending in involuntary bankruptcy since December 1, 1873, where no adjudication has been had, the petitioner must file a sworn amendment to his petition, alleging on information and belief that the petitioners represent one-fourth in number and one-third in amount of the creditors of the bankrupt.—*In re Joliet Iron and Steel Co.*, vol. 10, p. 60.

#### 4. *Idem*.

By the amendment of June 22d, 1874, every petition to force a debtor in bankruptcy, filed since December 1st, 1873, is required to contain the allegation that the petitioners are one-fourth in number and one-third in value of the creditors of the debtor. This applies as well to cases pending as to those that may hereafter be brought.—*In re Scammon*, vol. 10, p. 67.

#### 5. Not Necessary after Adjudication.

It is not necessary that a fourth in number and a third in value shall join as petitioning creditors in cases where the petition was filed since December 1, 1873, and the debtor was adjudged a bankrupt prior to June 22d, 1874.—*William J. Pickering*, vol. 10, p. 208.



**6. Idem.**

It is not necessary to amend the petition where there has been an adjudication in bankruptcy before the amended act of June 22d, 1874, took effect.

The provisions of the amended act in regard to the number and amount of the petitioning creditors, do not apply to such cases.

The judgment of adjudication based upon a petition conforming to the provisions of law in force when made, is valid, and as binding upon the debtor and his creditors as if the amended act had not been passed: the adjudication removed the case beyond legislative control.—*Raffauf*, vol. 10, p. 69.

**7. Contra, if the Order has not been Entered.**

A petition in involuntary bankruptcy was filed June 4th, 1874. The order to show cause was returnable June 13th, 1874; the debtor failed to appear, and the case was adjourned from time to time by the petitioning creditor until after the approval of the Amendatory Act of June 22d, 1874, but up to that time no order of adjudication had been entered. On an application of the petitioning creditor for the entry of an order of adjudication, as on a default for want of an appearance,

*Held*, That the provision of the amendment of June 22d, 1874, requiring that in all cases commenced since December 1st, 1873, and prior to the passage of the amendment, the debtor is to be adjudged a bankrupt on the petition of one or more of his creditors, who shall constitute one-fourth at least in number of his creditors, and the aggregate of whose debts provable under the act amounts to at least one-third of the debts provable, applies to this case, and that the fact that the debtor has not appeared to make the objection, or to deny that the petitioning creditors do in fact constitute the requisite number in value and amount, makes no difference.—*In re Scull*, vol. 10, p. 166.

**8. Idem.**

A petition was filed against H., January 17th, 1874, and on the return of the order to show cause, the debtor appeared, denied the acts of bankruptcy and demanded a trial by the court. March 18th, 1874, a memorandum, signed by the initials of the

judge, was made on the petition, directing that an order of adjudication be entered. No such order was entered prior to June 22d, 1874. On an application to sign such order, *nunc pro tunc*, as of March 18th,

*Held*, That until the entry of a formal order of adjudication, the debtor cannot be considered as having been adjudged a bankrupt, and therefore, in this case, on the 22d day of June he remained "to be adjudged a bankrupt," and on that day the court was deprived of the power to adjudge a debtor a bankrupt, on a petition filed since December 1st, 1873, except in cases where "one-fourth in number and one-third in value of the creditors" make the application, on grounds therein stated.—*Hill*, vol. 10, p. 133.

**9. Rule of Determining Number.**

In determining whether the requisite proportion of creditors have joined in the petition, such creditors only should be reckoned whose provable debts exceed two hundred and fifty dollars. And if the petitioning creditors, whose provable debts exceed the sum aforesaid, constitute one-fourth in number of the creditors holding provable debts exceeding said sum, the requirement as to the number of the petitioning creditors is satisfied.—*Hymes*, vol. 10, p. 433.

**10. Idem as to Value.**

Where the petition is filed on behalf of creditors holding provable debts exceeding the sum of two hundred and fifty dollars, to ascertain whether the amount of the provable debts held by them is equal to one-third in amount, only the provable debts of creditors which exceed two hundred and fifty dollars must be reckoned. And the requirements of the statute is satisfied, if the provable debts due to such petitioning creditors equals one-third of the provable debts due to creditors holding provable debts exceeding the sum of two hundred and fifty dollars. And it is not necessary that the amount or the provable debts of the petitioning creditors should be equal to one-third of *all* the provable debts.—*Hymes*, vol. 10, p. 433.

**11. Idem. When Debts under Two Hundred and Fifty Dollars, Considered.**

The true construction of the proviso to the 12th Section of the Amendatory Act of

June 22d, 1874, that "if there be no creditors whose debts exceed said sum of two hundred and fifty dollars—or if the requisite number of creditors holding debts exceeding said sum fail to sign the petition, the creditors having debts of a less amount shall be reckoned for the purposes aforesaid," requires that when creditors having debts of a less amount than two hundred and fifty dollars are reckoned at all, they must be reckoned for all purposes, and in such case the petitioners must constitute one-fourth in number of *all* the creditors, and the amount of their provable debts must equal one-third of *all* the provable debts.—*In re Jacob Hymes*, vol. 10, p. 438.

### 12. Practice on Reference.

On an issue formed by the debtor, as provided in Section 9 of the amendment of June 22d, 1874, as to whether the petitioning creditors constitute the requisite proportion of creditors, the affirmative of the issue is in the petitioning creditors.

On a reference to ascertain whether the petitioning creditors constitute the requisite proportion, the petition, statement, and list form part of the proceedings on the reference; the debtor must attend on the reference and submit to an examination, if desired, as to all matters pertinent to the issue.

Where a reference is ordered to ascertain whether the petitioning creditors constitute the requisite proportion of the creditors of the alleged bankrupt, the clerk must send written or printed notices by mail, postage prepaid, to all of the creditors named in the list, at the addresses given in the list, of the time and place of the reference, and its object, at least ten days before the hearing; such notice to contain a copy of the list, with its names, place of residence, and amounts.—*Hymes*, vol. 10, p. 438.

### 13. Petition Filed after, but in Ignorance of the Amendment.

A petition was filed against B. to have him adjudged a bankrupt, June 25, 1874, the order to show cause being made returnable July 2, 1874. At the hearing the debtor's attorney objected to the petition on the ground that it contained no allegation that the petitioning creditor constituted one-fourth in number and one-third in value of

B.'s creditors. At the time of filing the petition, neither the creditor, his attorney, nor the court, had reliable information whether the amendments to the Bankrupt Act of June 22d, 1874, had been approved or not.

The court held that this case did not rest with those cases provided for in the Act, when the petition having been filed by one creditor, before the law took effect, and no order of adjudication passed, time is to be given for other creditors to unite in the petition; that this provision relates only to cases commenced before the amendment took effect; and as the petitioning creditor does not in fact, constitute one-fourth in number and one-third in value of the creditors of the alleged bankrupt, no amendment of the petition can be made.—*Burch*, vol. 10, p. 150.

### 14. Withdrawal to Break up Proportion.

Creditors who have united with the original petitioning creditor under the recent amendment, will not be allowed to withdraw and break up a quorum, unless cause be shown rendering it inequitable to require their assent.—*P. H. Heffron*, vol. 10, p. 213.

## III. Corporation.

### 15. Authorized by Majority Corporators.

Under the provisions of the 37th Section the filing of the petition must be "duly authorized by a vote of the majority of the corporators, at any legal meeting called for the purpose." No other petition can be recognized under the Act.—*Lady Bryan Mining Company*, vol. 4, p. 394.

## IV. Cost.

### 16. Retainer Paid Counsel after Adjudication.

Petitioning creditors are not allowed out of the fund, retainer paid their attorneys or for any services rendered by their attorney after adjudication of the debtor bankrupt.—*Comstock*, vol. 9, p. 88.

### 17. Debtor on Dismissal of Petition.

Where a petition is dismissed the debtor is entitled to receive by law the attorney's fees on a hearing in equity, twenty dollars. No fee can be taxed for petitioner's attorney.—*Dundore v. Coates & Bros.*, vol. 6, p. 304.

V. *Foreclosure.*

18. Contents of Petition for.

In order to entitle a mortgagee to apply to the court for leave to foreclose his mortgage in another court, he must prove his debt in the Bankruptcy Court as a secured claim. The petition must allege this fact, the date and amount of the debt proved: the mortgaged property must be fully described, and it must be stated what other incumbrances there are upon the property, and, if there are any, they must be fully described. It must state the actual value of the mortgaged property; if the value is greater than the incumbrances it must be made to appear that the rights of the petitioner cannot be fully protected by a sale by the assignee under the bankruptcy proceedings.—*Sabin*, vol. 9, p. 383.

VI. *Illegible.*

19. Not to be Filed.

Petition not to be filed because of illegible writing.—*Anonymous*, vol. 1, p. 215.

VII. *Injunction.*

20. Summary Proceeding.

A petition to enjoin a party from making use of a certain agreement which he holds is not a formal suit but a summary proceeding.—*Samson, Assignee, v. Clark & Burton*, vol. 6, p. 403.

VIII. *Intervention.*

21. "Such Petition."

The words "such petition" in the 42d Section of the Act, refer to the prior part of that section and also to the two preceding sections, and mean the petition of the original petitioning creditor and not the petition of the creditor who seeks to intervene.—*Lacy, Downs & Co.*, vol. 10, p. 478.

IX. *Parties.*

22. Petition in Involuntary, not Inter partes.

A petition in involuntary bankruptcy is not a mere suit *inter partes*, but rather partakes of the nature of a proceeding *in rem*, in which any actual creditor has a direct interest.—*Boston, Hartford & Erie R. R. Co.*, vol. 6, p. 210.

X. *Pleading.*

23. Should State Facts clearly.

When a petition is filed against a person,

praying that he may be adjudged a bankrupt, it should state the facts clearly, and when it does not, the respondent may decline to answer it.—*Randall*, vol. 3, p. 18.

A mere conformity to the statement of the act of bankruptcy in the language of the statute is insufficient.—*Id.*

A general statement in a petition, that a debtor, in January, 1869, stopped payment of his commercial paper for the period of fourteen days, is not such an allegation of fact as will warrant an adjudication of bankruptcy.—*Id.*

This allegation should state as nearly as possible the date of the promissory note or bill of exchange of which payment had been stopped; to whom made, and for what amount, and when payable; and whether the debtor was liable thereon as maker or indorser; and by whom the same was held when payment was neglected or refused.—*Id.*

XI. *Proportion of Creditors.*

24. Must be satisfactorily Proved.

A single creditor filed a petition July 23, 1874, which contained no allegation that the creditor constitutes one-fourth, at least, in number of the creditors of the debtor, and that the aggregate of his debts provable under the act amounts to at least one-third of the debts so provable.

The petition was accompanied by a paper purporting to be signed by the debtor to the effect, "That the debtor admits that the requisite number and amount of his creditors have joined in the petition herein, and consents that proceedings shall be had under said petition as a petition signed by the requisite number and amount of his creditors."

There was no authentication of the genuineness of the signature to this paper, nor was it verified by the oath of the signer.

*Held*, That the absence of the allegation as to the number and amount of the creditors in the petition is not supplied by the admission of the debtor now presented. That even after such admission is made in writing the court must be satisfied that the admission was made in good faith.—*Keeler*, vol. 10, p. 419.

XII. *Second Petition.*

25. Proceedings Stayed on.

Where an adjudication has been made

on a voluntary petition, and a warrant has issued for the first meeting of creditors, and the matter of said petition is still pending without any discharge or discontinuance, and the bankrupt files a second petition in which the same debts and the same creditors are named, the choice of an assignee will not be made in the second proceeding pending the first, and an order will be made staying the proceedings under the second petition.—*In re Wielarski*, vol. 4, p. 390.

### XIII. Secured Debt.

#### 26. Will Sustain.

A debt wholly or in part secured, either by levy under an execution, by pledge of personal property or mortgage upon real estate, will sustain a petition for an adjudication of bankruptcy.—*Stansell*, vol. 6, p. 183.

### XIV. Signing.

#### 27. Affidavit to Petition.

When, in an involuntary case, the petitioners failed to subscribe the affidavit to the petition,

*Held*, The petition was defective, inasmuch as the forms prescribed by the Supreme Court required the affidavit and petition to be subscribed by petitioners. Defect incurable, since petition was not a petition *in propria forma*, such as could be amended.—*In re Moore & Brother v. Harley*, vol. 4, p. 242.

#### 28. Petition and Deposition to Act of Bankruptcy.

If neither the petition nor the deposition of the act of bankruptcy are signed by the petitioner, the defect is fatal.—*Hunt, Tillinghast & Co. v. Pooke & Spere*, vol. 5, p. 161.

#### 29. General Attorneys Cannot.

General attorneys of creditors cannot make, sign, and verify a valid petition, as the debtor must be adjudged a bankrupt on the petition of one or more of his creditors, and not on that of their agent or attorney.—*Butterfield*, vol. 6, p. 257.

#### 30. Ratification of.

So long as it appears that, in fact, the petitioning creditor authorized the institution of the proceedings in his behalf and so became liable for costs, the matter of signing and authentication is purely formal and unimportant to any right of the debtor.—*Raynor*, vol. 7, p. 527.

### XV. Verification.

#### 31. Proof of—and before Whom.

The petition must be signed and duly verified by the same officers and in the same manner as oaths in other cases to be used in the courts of the United States. When administered by a notary public the signature and notarial seal of the notary constitute a sufficient authentication.—*Sabin*, vol. 9, p. 383.

### PLEADING.

See AMENDMENT,

ANSWER,

APPEAL,

DEPOSITION,

INJUNCTION,

LIMITATIONS,

MARRIED WOMAN,

PARTNERS,

PETITION,

PROCEEDING IN

EQUITY,

VARIANCE.

#### PLEADING—

I. *Abatement*, p. 537.

II. *Admissions*, p. 537.

III. *Allegation as to Number and Value of Creditors*, p. 537.

IV. *Amendment*, p. 537.

V. *Claim and Delivery*, p. 538.

VI. *Defenses*, p. 538.

VII. *Denial of Fraudulent Intent*, p. 538.

VIII. *Demurrer*, p. 538.

IX. *Pleading Discharge*, p. 539.

X. *Equity Pleadings*, p. 540.

XI. *Fraud*, p. 540.

XII. *General Denial and Demand for Jury Trial*, p. 540.

XIII. *Indictment*, p. 541.

XIV. *Injunction*, p. 541.

XV. *New Matter*, p. 541.

XVI. *New Promise*, p. 542.

XVII. *Objections*, p. 542.

XVIII. *Payment*, p. 542.

XIX. *Petition*, p. 542.

XX. *Replication*, p. 542.

XXI. *Specifications*, p. 543.

XXII. *Stoppage of Payment*, p. 543.

XXIII. *Trover*, p. 544.

XXIV. *Variances*, p. 544.

XXV. *Verification*, p. 544.

I. *Abatement.*1. *Transfer of Interest.*

As pleas in abatement do not deny and yet tend to delay the trial of the action, great accuracy and precision is always required in framing them; therefore, if the plea or answer relies upon a transfer of the interest of the plaintiffs to abate the action, it must state to whom the transfer has been made.—*Sutherland v. Davis*, vol. 10, p. 424.

II. *Admissions.*2. *Of Preference.*

Denial of fraudulent intent in giving a confession of judgment, admits that it was a preference though not a fraudulent one.—*Sutherland*, vol. 1, p. 531.

3. *Non-denial not Necessarily an Admission.*

Only an allegation of some fact which is presumed to be within the knowledge of the party answering can be taken as true, simply because it is not denied.—*White v. Jones, Assignee*, vol. 6, p. 175.

III. *Allegation as to Number and Value of Creditors.*4. *Under Amendment of 1874.*

In all petitions pending in involuntary bankruptcy for adjudication, commenced since December 1st, 1873, the petition must contain a sworn allegation that the petitioners represent one-fourth in number and one-third in value of the creditors of the bankrupt.—*Joliet Iron and Steel Company*, vol. 10, p. 60.

5. *Idem.*

By the amendment of June 22d, 1874, every petition to force a debtor in bankruptcy, filed since December 1st, 1873, is required to contain the allegation that the petitioners are one-fourth in number and one-third in value of the creditors of the debtor. This applies as well to cases pending as to those that may hereafter be brought.—*Scammon*, vol. 10, p. 67.

6. *Idem.*

Where a petition was filed on June 25th, 1874, three days after the actual passage of the amendment, but previous to the parties having any knowledge thereof, this ignorance did not excuse a failure to comply with its requirements, and a petition not conformable thereto must be dismissed.—*In re Thomas F. Burch*, vol. 10, p. 151.

7. *Idem.*

Where a petition to have a debtor adjudged a bankrupt was returnable on June 13th, 1874, and the debtor made no appearance, the case was adjourned. On application after June 22d, 1874, for adjudication by default,

*Held*, For an adjudication after the approval of the Amendatory Act, the petitioner must allege and prove the facts, which by said act are made pre-requisites for adjudication.—*Scull*, vol. 10, p. 166.

8. *Idem.*

A single creditor filed a petition July 23d, 1874, which contained no allegation that the creditor constitutes one-fourth, at least, in number of the creditors of the debtor, and that the aggregate of his debts provable under the act amounts to at least one-third of the debts so provable.

Order to show cause refused.—*In re Keeler*, vol. 10, p. 419.

IV. *Amendment.*9. *Contemplation of Insolvency.*

Where a petition averred that acts were committed by bankrupt, in contemplation of bankruptcy and insolvency, and evidence of insolvency only was given, the petition should be amended accordingly.—*Haughton*, vol. 1, p. 460.

10. *Introducing New Acts of Bankruptcy.*

Amendments that would introduce into the petition entirely new acts of bankruptcy will be disallowed.—*Crowley & Hoblitzell*, vol. 1, p. 516.

11. *Formal.*

Where the amendment is merely formal, and facts were alleged in the petition which were proved true, showing that the debtor was insolvent, etc., and the new amendment covered what had already substantially appeared, the debtor cannot complain of being taken by surprise, and such amendment will be allowed.—*Craft*, vol. 2, p. 111.

12. *Assignee's Return.*

Where solicitor of bankrupt moved that the assignee be ordered to amend his return in a certain respect, but nothing appeared to show wherein such amendment was proper or necessary or what interest of the bankrupt would be affected,

*Held*, The assignee is not required to



make the amendment.—*Kington*, vol. 3, p. 446.

#### V. *Claim and Delivery.*

##### 13. To True Owner.

Where the defendant, during the pendency of an action to recover the possession of personal property, and before the trial, has been required to deliver and has delivered the property to another who is entitled to its possession as against both the plaintiff and defendant, this fact may be set up in the answer, or in a supplemental answer, for the purpose of barring a recovery of the possession, in the value of the said property.—*Bolander v. Gentry*, vol. 2, p. 656.

#### VI. *Defenses.*

##### 14. Several.

Defendant may set forth in his answer as many defenses as he has, but they must be stated separately.—*Ouimetts*, vol. 3, p. 567.

#### VII. *Denial of Fraudulent Intent.*

##### 15. May be in Admission of Preference.

The denial of a debtor, in his answer to a petition of bankruptcy filed against him, is not sufficient to prevent adjudication, when it admits the confession of a judgment, although it denies that there was a fraudulent intent to give a fraudulent preference; for such negative allegation implies that the judgment was confessed with an intent to give a preference, although not a fraudulent one.—*Sutherland*, vol. 1, p. 531.

##### 16. Where the Facts Admitted Constitute Fraud.

Where the petition alleges facts which constitute a fraud in law, if the answer admits the facts but denies the fraudulent intent, the part denying the intent will be treated simply as the statement of an erroneous legal conclusion.—*Hawkeye Smelting Co.*, vol. 8, p. 385.

##### 17. Not Sufficient Without Allegation of the Real Intent.

All pleadings must be special, and therefore a mere general denial of the intent in which an act is alleged to have been done is not a good defense to a charge of having committed an act of bankruptcy, but the respondent must also allege, and prove, with what intent he did the act complained of.—*Silverman*, vol. 4, p. 522.

#### VIII. *Demurrer.*

##### 18. Does not Lie to Insufficient Averment.

Petition filed in involuntary bankruptcy was signed in the firm name of creditors, and affidavit made thereto by one C., a member of the firm, averring that the defendant, "being a trader, had fraudulently suspended and not resumed payment of his commercial paper within a period of fourteen days."

On demurrer,

*Held*, Objection to the sufficiency of averment cannot strictly be raised on demurrer, but should be by answer.—*Orem v. Harley*, vol. 3, p. 263.

##### 19. To Complaint Defective only in Form.

When a complaint is defective in form, but not in substance, such defect can only be reached by demurrer on the ground that the complaint is unintelligible or uncertain.—*Merritt v. Glidden et al.*, vol. 5, p. 157.

##### 20. To Bill in Equity on Ground that Proper Remedy is at Law.

A demurrer to a bill in equity brought by the assignee, on the ground that complainant has a complete remedy at law, will be overruled where the facts show that questions of fraud, trust, and partnership are all involved in the case at issue.—*Taylor, Assignee, v. Rasch & Bernart*, vol. 5, p. 399.

##### 21. Will not Lie to Answer Denying Validity of Proceedings.

An assignee in bankruptcy brought an action to recover certain real estate, averring title in himself by virtue of the bankruptcy proceedings, and annexed as exhibits certain portions of the proceedings. The defendant by answer sets up title in himself, derived from the bankrupt after the commencement of bankruptcy proceedings, and denies that the Bankrupt Court had jurisdiction of the bankrupt or his property. The plaintiff demurred to the answer, declining to plead further and, standing upon his demurrer, judgment was rendered against him in the court below.

*Held*, That the demurrer to the answer was properly overruled, for the reason that the answer amounted to a denial of the validity of the bankruptcy proceedings,



and the defendants cannot be denied the right to establish by competent evidence that the bankruptcy proceedings are void.—*Stuart, Assignee, v. Aumuller et al.*, vol. 8, p. 541.

## **22. Waives Right to File Denial and Demand for Jury Trial.**

To the rule to show cause why the debtor should not be adjudged bankrupt, respondent appeared on the return day and filed a general demurrer to the petition. The argument of the demurrer was postponed a few days, by consent, and, after argument, was overruled as frivolous. Debtor then asked leave to file a general denial and demand for trial by jury.

*Held*, The respondent having elected to demur on the return day, has waived the right given him under Section 41 to file a general denial and demand.—*Penn et al.*, vol. 8, p. 93.

## **23. Does not Lie to Answer Denying Insolvency and Setting up Usury.**

A petition was filed against a debtor alleging that he had committed acts of bankruptcy by suspending payment of his commercial paper. The defendant answered the petition, denying that he was insolvent, and alleged that the notes in question were usurious.

The petitioner filed a demurrer to the answer. The court overruled the demurrer, on the ground that the answer presented an issue of fact upon the suspension of payment of the alleged bankrupt's commercial paper.—*Staplin*, vol. 9, p. 142.

## **24. To Pleading in the Alternative.**

A pleading in the alternative is always objectionable, and when it relates to a material fact in the case will be held bad on demurrer.—*Redmond & Martin*, vol. 9, p. 408.

## **IX. Pleading Discharge.**

### **25. Omission from Schedule.**

Where an amended answer set up a discharge in bankruptcy, and objection was made on the ground that claimant's names had been omitted from the bankrupt's schedules of creditors,

*Held*, The discharge in bankruptcy was sufficiently pleaded, and it was admitted to be genuine by replication.—*Payne & Brother v. Abel et al.*, vol. 4, p. 220.

### **26. In Assumpsit.**

In assumpsit for the price of goods sold, when the defendant pleads discharge in bankruptcy the plaintiff is not estopped by the form of his action to reply that the debt was created by the fraud of the defendant.—*Stewart v. Emerson*, vol. 8, p. 462.

### **27. Purely Legal.**

The plea of bankruptcy is not an equitable defence, but purely legal.—*Medbury v. Swan*, vol. 8, p. 537.

### **28. Where Proceedings are Fraudulently Concealed.**

A debtor will be estopped pleading in bar, in a suit in a State court, a discharge in bankruptcy obtained *pendente lite*, where he fraudulently concealed from his creditor the pendency of the bankrupt proceedings until after discharge granted, and the creditor had no other notice of the pendency of such proceedings.—*Batchelder, Adm'r v. Low*, vol. 8, p. 571.

### **29. Continuing Contract.**

On a continuing contract, where the liability is incurred from day to day, or month to month, a discharge in bankruptcy cannot be pleaded as a bar to any part of the liability incurred after the date of the commencement of proceedings in bankruptcy.—*Robinson et al. v. Pesant et al.*, vol. 8, p. 426.

### **30. In Suit Continued after Bankruptcy Proceedings were Superseded.**

A suit was commenced by plaintiff prior to filing a petition in bankruptcy. After the petition was filed the proceedings in bankruptcy were superseded by arrangement, under Section 43. The trustees completed their trust, filed their final accounts, and were discharged. Nothing had been done in the original suit; but after the discharge of the trustees the defendants pleaded the bankruptcy of plaintiff as a bar to his further prosecution of the suit.

*Held*, Under the peculiar facts in this case, the plea must be overruled.—*Conner v. The Southern Express Co.*, vol. 9, p. 138.

### **31. In Suit for Conversion.**

A claim for damages for a wrongful conversion of personal property, is provable under the 19th Section of the Bankrupt Act of 1867, and a discharge in bankruptcy would release the bankrupt from such a claim;

hence, his plea of bankruptcy interposed in a suit brought in a State court to recover such damage is a complete bar, and entitles him to a dismissal of the cause.—*Cole v. Ronch*, vol. 10, p. 288.

### 33. Issue must be Submitted to Jury.

If a discharge in bankruptcy be pleaded, the court cannot dismiss the cause on that ground, but must submit the issue to a jury.—*Austin v. Markham*, vol. 10, p. 548.

## X. Equity Pleadings.

### 34. Foreclosure.

Where a subsequent incumbrancer is already impleaded by a prior one, a subsequent original bill on his part, will not be sustained to foreclose his mortgage. Full relief may be granted in the first suit, either with or without a cross-bill, as exigencies exist.

When matters are germane to and connected with the subject of a suit they may be introduced by cross-bill, although new and not mentioned in the original bill.—*Sutherland v. Lake Superior Canal Co.*, vol. 9, p. 298.

### 35. Wisconsin Code.

Pleading in equity cases are not changed by the Wisconsin Code.—*Burfee, Assignee, v. First National Bank of Janesville*, vol. 9, p. 314.

### 36. Defective Allegation of Fraud.

A bill in equity is defective in statement, that alleges a claim to be illegal or invalid, and to have been fraudulently proved, in general terms, without specifying wherein the illegality or fraud consists.—*Bank of Troy*, vol. 9, p. 529.

## XI. Fraudulent Conveyances.

### 37. Fraud must be Alleged.

Bankrupt executed a deed of trust of certain lands in Florida, which was duly recorded; but trustees never took possession or steps to carry out the trust, but the property remained in the possession of bankrupt. Assignee petitioned to have the trust deed set aside and delivered up to the trustees to be cancelled, as throwing a cloud on title.

*Held*, It not being alleged and no facts shown that such conveyance was in fraud of creditors, the petition must be dismissed with costs.

It should have been alleged and proved

that the conveyance was in fraud of creditors under the laws of Florida, wherein the land is situate.—*Broome*, vol. 3, p. 344.

### 38. May be Set aside upon Petition.

Where assignee of bankrupt filed a petition alleging that bankrupt, within six months of his bankruptcy, etc., conveyed certain real estate to C. M. Rogers, valued at about nine thousand dollars, and two promissory notes, with intent to defeat the provisions of the Bankrupt Act, prays for an injunction to set aside said conveyance, etc. Counsel for C. M. Rogers object that the proper remedy is by bill in equity, and not by petition.

*Held*, Objections overruled, and assignee allowed to proceed upon his petition.—*Norris*, vol. 4, p. 35.

## XII. General Denial. Demand for Jury Trial.

### 39. No Replication Necessary to Denial.

An answer to petition of creditors denying the commission of acts of bankruptcy, and averring that they should not be declared bankrupts for any cause alleged in the petition, amounts to a general issue, and no replication is necessary.—*Dunham & Orr*, vol. 2, p. 17.

### 40. Denial and Demand for Jury sufficient, without Formal Answer.

A response to the rule to show cause in involuntary bankruptcy, which denies the acts of bankruptcy charged in the petition, and demands a trial by jury, is sufficient, without a formal answer to the petition.—*Phelps v. Clasen*, vol. 3, p. 87.

### 41. Jury Trial Waived by Failure to file Plea.

On the return day of a rule to show cause why the debtor should not be adjudged bankrupt, the debtor entered an appearance by his attorneys, and at their request a continuance was granted generally, they neither filing any plea, demurrer, answer, or demand for a jury trial, or asking for further time in which to plead in either of these ways. On the day to which the case was continued, the debtor asked leave to file a general denial and demand for jury trial.

*Held*, He had waived his right by not filing it on the return day, or getting special leave to file at the adjourned day.

In this case the court gave leave to plead,

demur, or answer forthwith, to be *tried by the court*, and refused the trial by jury.—*Sherry*, vol. 8, p. 142.

#### 42. Demand for Jury need not be in Writing.

Neither the Bankrupt Law nor Form 61 require that the answer to a creditor's petition to entitle the debtor to demand and have a hearing by the court or a trial by jury, should be verified or even in writing. It is sufficient if he appears before the court and allege that the facts set forth are not true.

The better practice, however, is to put the whole answer in writing, and allege in express terms that the facts set forth in the petition are not true, and then conclude with a demand for a hearing by the court or a trial by jury. It should be signed by the respondent in person or by attorney.—*Heydette*, vol. 8, p. 333.

#### 43. Proper Response to Order to Show Cause.

Form 61 is a proper response to a rule to show cause, and entitles the defendant to a jury trial.—*Hawkeye Smelting Co.*, vol. 8, p. 385.

#### 44. Denial on Information and Belief.

An answer by a defendant denying, upon information and belief, is insufficient and evasive, and such denial does not raise an issue, and the allegations in the bill must be taken as true. A party is not permitted to deny an allegation in his adversaries' pleading upon information and belief, when, from the very nature of the charge, his knowledge, if any, must be direct and personal. All such allegations must be answered positively that the party has no knowledge, information or belief of the facts set up in the pleading.—*Burfee, Assignee, v. First Nat. Bank of Janesville*, vol. 9, p. 314.

### XIII. Indictments.

#### 45. For Fraudulently Obtaining Goods.

The indictment under Section 44 should set out the filing of the petition, the name of the petitioning creditor, the amount of his debt, the alleged act of bankruptcy, and the adjudication of the Bankrupt Court.

The description of the goods obtained must be as certain as it can reasonably be

made. It should be as definite as would be required in a declaration in trover.

The proceeding in the Bankrupt Court must be pleaded and proved with such particularity, as to show affirmatively that an adjudication of bankruptcy was made upon a case in which the court had jurisdiction.—*United States v. Prescott*, vol. 4, p. 112.

#### 46. Idem.

An indictment which avers that the defendants conspired to obtain "dry goods of an alleged value, under color and pretense of a purchase upon the credit of one of the conspirators, of and from such parties as could thereafter be induced by him to part with such goods under the false and fraudulent pretense thereafter to be made by him to them, that he intended to take said goods to his retail shop, specifying its location, for the purpose of selling them there to his customers by retail, in the usual and ordinary course of retail trade," sufficiently avers that the defendant conspired to obtain the goods by means of the false pretense; it is not bad as charging a pretense of a promissory character for the future and not relating to a present fact; it describes the substance of the pretense sufficiently; and also sufficiently describes the goods to be obtained by it within the Gen. Sts. of Massachusetts, C. 161, Section 54, and St. of 1863, C. 248, Section 2.

It is no defense to an indictment that the facts in proofs show that the defendant committed an offense of a higher degree than that charged.—*Commonwealth v. Walker et al.*, vol. 4, p. 672.

### XIV. Injunction.

#### 47. Summary Proceeding.

A bill praying an injunction to restrain the selling or otherwise disposing of a stock of goods charged to have been fraudulently transferred, though it may have the general features of one in equity, is nothing more than a petition, application, or other summary proceeding under the Bankrupt Act.—*Fendley*, vol. 10, p. 251.

### XV. New Matter.

#### 48. In Avoidance.

The respondent may answer each allegation specially, and set up new matter by way of avoidance. In such cases a replica-

tion will be necessary to put in issue such new matter.—*Hawkeye Smelting Co.*, vol. 8, p. 385.

#### XVI. *New Promise.*

##### 49. Original Debt cause of Action.

Where a debt discharged in bankruptcy is revived by a new promise, the original debt should be set out as the cause of action and the new promise replied, when the plea of discharge in bankruptcy is filed.—*Dusenbury, Executor, v. Hoyet*, vol. 10, p. 813.

#### XVII. *Objections.*

##### 50. Taken Technically.

The United States Circuit Court cannot notice objections taken on merely technical grounds where no demurrer was filed in the District court, for the reason that the 22d Section of the Judiciary Act forbids such notice except in cases of demurrer.—*Babbitt v. Burgess*, vol. 7, p. 561.

##### 51. Preliminary.

Two creditors who had not proved their debts appeared at the first meeting, by their attorney, who filed preliminary objections to the proceedings which the bankrupt moved to strike out. Upon the questions thus raised and certified for the decision of the court, it was

*Held*, An objection filed at the first meeting, that the bankrupt had omitted property from his schedules, was not "an opposition to the discharge of the bankrupt." In no event would such objection avail unless it specified the particular omissions relied on.—*Hill*, vol. 1, p. 16.

#### XVIII. *Payment.*

##### 52. Allegation of, Sufficient.

The holders, respectively of two promissory notes past due, petitioned jointly to have the drawer, their debtor, adjudicated bankrupt. The defendant denied insolvency, and pleaded payment of said two notes by petitioners accepting certain other notes, provided they proved, on inquiry, to be collectible.

Petitioners demurred to the sufficiency of the answer.

*Held*, Answer sufficient.—*Ouimette*, vol. 3, p. 566.

##### 53. Conditional.

Petitioners should reply to plea of payment where notes received conditionally

turned out to be worthless.—*Ouimette*, vol. 3, p. 567.

##### 54. Special Denial of Amount of Indebtedness not Necessary.

Payments made by the debtor to the petitioning creditors are material facts on the issue in denial of bankruptcy, and the debtor can introduce evidence of such payments without a special traverse of the amount of his indebtedness.—*Skelley*, vol. 5, p. 214.

#### XIX. *Petition.*

##### 55. For Adjudication.

When a petition is filed against a person, praying that he may be adjudged a bankrupt, it should state the facts clearly, and when it does not the respondent may decline to answer it.—*Randall & Sunderland*, vol. 3, p. 18.

##### 56. To Set Aside Fraudulent Conveyance.

Bankrupt's assignee filed petition to set aside conveyance made within ten months of bankruptcy with intent to defeat the provisions of the Act. Objection being made that the proper remedy was by bill in equity,

*Held*, Objection overruled, and assignee allowed to proceed upon his petition.—*Norris*, vol. 4, p. 35.

##### 57. For Review.

A petition to revise the decision and judgment of the District Court refusing to grant to a debtor a certificate of discharge from his debts under the Bankrupt Act, should set forth in what the error in the decision or judgment of the District Court consists, and the nature of the error, for the information of the Appellate Court, and as notice to the opposite party.—*Littlefield v. Delaware and Hudson Canal Company*, vol. 4, p. 258.

#### XX. *Replication.*

##### 58. Not Necessary to General Denial.

No replication is necessary where the answer denies the commission of acts of bankruptcy, and avers debtors should not be declared bankrupt for any cause alleged in the petition.—*Dunham & Orr*, vol. 2, p. 17.

##### 59. To Plea of Payment.

If notes received in conditional payment turned out to be worthless, and the alleged payment was therefore no payment, petitioners should reply to the plea.—*Ouimette*, vol. 3, p. 567.

**60. To New Matter.**

A replication is necessary to put in issue new matter set up by way of avoidance.—*Hawkeye Smelting Co.*, vol. 8, p. 385.

**XXI. Specifications.**

**61. Of Concealment of Property and Omission from Schedule.**

A specification that the bankrupt had falsely set forth in his petition and schedules, that he had no property, is defective, unless it specifies what property he had. Specifications alleging concealment or omissions from the schedules are defective if they do not allege that these acts were willful, fraudulent, or negligent.—*Beardsley*, vol. 1, p. 304.

**62. Idem. Negligence—False Swearing.**

A specification in opposition to a bankrupt's discharge which avers that he has property which he has omitted from his schedule, and has been guilty of negligence in delivering to the assignee property belonging to him at the time of the filing of his petition, is specific enough to be triable; likewise a specification averring willful false swearing to his schedules on the part of the bankrupt.—*Rathbone*, vol. 1, p. 324.

**63. Idem.**

A specification in opposition to a discharge, to conform to the requirements of Section 29 of said Bankrupt Act, must allege willful false swearing as well as willful omission from schedule.—*Keefer*, vol. 4, p. 389.

**64. Must not be Indefinite.**

Where the allegations in specifications filed in opposition to the bankrupt's discharge are too vague and indefinite to be triable, the case stands as though there was no opposition, and no specifications filed, and if the bankrupt has in all things conformed to his duty under the Act, a discharge must be granted to him.—*Son*, vol. 1, p. 310.

**65. Idem.**

The strictness of common law pleading is not required in creditor's specifications, but the bankrupt is entitled to such particularity of statement, as will give him reasonable notice of what is expected to be proven against him.—*In re Smith & Bickford*, vol. 5, p. 20.

**66. Of Influencing Creditors.**

A specification in opposition to a discharge in bankruptcy that the bankrupt has "influenced the action" of certain creditors by a pecuniary consideration and obligation, is sufficiently distinct to be triable.—*Mawson*, vol. 1, p. 437.

**67. Without Reference Aliunde.**

In opposing discharge, the facts relied on must be stated in the specifications filed, without requiring a reference to other parts of the record of the case.—*In re Eldon*, vol. 8, p. 105.

**XXII. Stoppage of Payment.**

**68. When Intent must be Alleged.**

Stoppage and non-resumption of payment of commercial paper for a period of fourteen days is not an act of bankruptcy, unless fraudulent, and this must be distinctly alleged in the petition and accompanying affidavits, and if fraud be not alleged, an order to show cause should be refused.—*Cone & Morgan*, vol. 2, p. 21.

**69. Idem.**

The intent of the alleged bankrupt in suspending payment for fourteen days should be alleged as a fact.—*Orem v. Harley*, vol. 3, p. 263.

**70. Idem. Averment of Occupation.**

Fraudulent suspension and non-payment is necessary to be averred only when the act of bankruptcy charged is that specified in Clause 9 of Section 39 of the Act.

Language that N., "being a merchant," is a sufficient averment that he is a merchant under said Clause 9.—*Nickodemus*, vol. 3, p. 230.

**71. Allegation of Occupation.**

Where the bankruptcy proceedings are based on the 9th Clause of the 39th Section of the Bankrupt Act of 1867, as amended, it is necessary to aver and prove that the debtor was either a banker, broker, merchant, manufacturer, miner, or trader.—*Alabama & Chattanooga R. R. Co. v. Jones*, vol. 5, p. 98.

**72. Allegation of Demand.**

The allegation of stoppage and suspension of payment on a certain day, upon commercial paper which was made and dated within the six months next preceding the actual filing of the petition, connected with the allegation that payment of



the commercial paper (a due bill) had been demanded at different times, and that the respondent had failed to make such payment, was equivalent to an allegation of a demand for payment on that day.—*Chappel*, vol. 4, p. 540.

XXIII. *Trover*.

## 73. Adjudication of Bankruptcy.

In an action for trover brought by the assignee in bankruptcy, he undertook to set out in detail in his declaration the manner in which he claimed to have become the owner of the property, but failed to allege an adjudication in bankruptcy.—*Wright, Assignee, v. Johnston*, vol. 4, p. 626.

XXIV. *Variance*.

## 74. Middle Letter of Name.

The statement of a wrong middle letter of the bankrupt's name, in the notice sent to a creditor, is not a material variance.—*Hill*, vol. 1, p. 16.

XXV. *Verification*.

## 75. Answer.

It is not necessary to entitle debtor to have a hearing by the court or a trial by jury, that his answer should be verified. It is sufficient to appear before the court and allege that the facts set forth are not true. The better practice is, however, to put the whole answer in writing, concluding with the necessary demand. It should be signed by the respondent or by attorney.—*Haydette*, vol. 8, p. 333.

## 76. Denial.

A denial of the alleged acts of bankruptcy need not be sworn to.—*Hawkeye Smelting Co.*, vol. 8, p. 385.

## PLEDGE.

See LIEN,  
MORTGAGE,  
WAIVER.

## 1. Insolvency of Pledgor.—Redemption of.

Where bankrupt had, by his agent, unlawfully used funds coming into his hands, belonging to one Mayer, and had offered his draft, due in thirty days, for the money thus appropriated; Mayer refused to accept it, and instructed his attorneys to

commence suit by attachment at once; the agent proposed to turn over certain goods to secure the payment of the money made use of, which the attorneys accepted. Neither the bankrupt, his agent, nor the attorneys being in any way aware of the insolvency of the bankrupt.

*Held*, As there is no evidence that any creditor or purchaser was deceived or misled, it is good between the parties.

This being a valid pledge of goods, the money paid to redeem the goods from that pledge cannot be recovered.

The goods thus pledged, being of greater value than the debt, should be redeemed for the benefit of creditors.—*Jenkins, Assignee, v. Mayer*, vol. 3, p. 777.

## 2. Right of Disposal of.

A pledgee's right to dispose of the property pledged, is suspended from the filing of the petition in bankruptcy of the pledgor until the appointment of an assignee, in the same manner as if the pledgor had died intestate, the pledgee must wait for representatives to be appointed.—*Grinnell & Co.*, vol. 9, p. 29.

3. *Idem*. Stock.

Where stock is pledged to secure call loans, the pledgee need not obtain leave of the court, on the bankruptcy of the pledgor, to sell the stock pledged and pay the surplus into court for the benefit of whom it may concern.—*Grinnell*, vol. 9, p. 137.

## 4. Waiver.

The bankrupt, to secure a debt, gave R. a bill of sale of a silver cornet, and delivered it to R., but subsequently borrowed the cornet to use, and agreed to return it, but had the exclusive possession several months before he went into bankruptcy.

*Held*, That R. had waived whatever right he had under the bill of sale; that the transaction was a pledge and not a mortgage.—*Harlow*, vol. 10, p. 280.

## POLICY OF INSURANCE.

See INSURANCE.

## On Life of Debtor.

An assignee in bankruptcy cannot require a creditor either to retain a policy of insurance on the life of his debtor, given as collateral security for the payment of a



debt, and withdraw his proof of debt, or to surrender such policy to the assignee for the benefit of the estate, and take a dividend on all his claim.

The creditor is entitled to retain such policy, and the only allowance that can be made for such collateral security is the cash surrender value of the policy, to be credited on the amount of the debt proved. *In re Frank F. Newland*, vol. 7, p. 477.

POSTPONING PROOF.

See ASSIGNEE.

POSSESSION.

See ASSIGNEE.

1. Of Assignee.

A vessel belonging to the bankrupt passed into possession of the assignee as assets, and was attached there in a suit *in rem* on a claim for damages occasioned by her collision with another vessel prior to the adjudication in bankruptcy. The assignee applied for an injunction to restrain the libellants in the premises.

*Held*, That the injunction should be granted. The possession of the assignee was that of the court, and any claim or lien of the libellants against the vessel would be adjudicated by the Bankruptcy Court.—*Peoples' Mail S. S. Co.*, vol. 2, p. 553.

2. Divesting Depositary of.

Where a party lays claim to a certain fund, the possession of the depositary is his possession, provided his claim is just and legal; therefore, if the assignee in bankruptcy would divest him of the possession and control of the fund in question, he must do it by a suit at law or in equity, as provided in the third clause of the 2d Section of the Bankrupt Act.—*Smith v. Mason*, vol. 6, p. 1.

POUNDAGE.

See SHERIFF.

POWER OF ATTORNEY.

See ACT OF BANKRUPTCY,  
PREFERENCE,  
REASONABLE CAUSE.

1. Given by General Attorney.

S. claimed to act as attorney for L. W. & Co., upon a power of attorney given to

him by K., as general agent for L. W. & Co., duly acknowledged. No power of attorney to K. was produced, nor was his attorneyship proved by the oath of any one.

*Held*, That S. was not the duly constituted attorney of the said creditor.—*In re William H. Knoepfel*, vol. 1, p. 23.

2. Idem.

An attorney sought to represent certain creditors upon an appointment by their general attorney, who was himself constituted and approved prior to the passage of the Bankrupt Act, by a power of attorney authorizing him to sign the firm name to any paper writing, proper or necessary to collect or receive debts due, with power of substitution.

*Held*, That the authority of the special attorney was sufficient.—*Knoepfel*, vol. 1, p. 70.

3. Creditor's Agent cannot Vote for Assignee without.

An agent of creditor proved the claim of his principal in bankruptcy, and sought to vote for assignee.

*Held*, That he could not do so without power of attorney.—*In re James J. Purvis*, vol. 1, p. 163.

4. To Confess Judgment.—Enabling Debtor to Continue Business.

In deciding whether giving a warrant to confess judgment is an act of bankruptcy, the character of the alleged bankrupt's business may be taken into consideration; and where it appears that the purposes of the warrant of attorney may have been to enable the debtor to continue in business, and that there was no intention to defeat or delay the operation of the Bankrupt law, it is not sufficient ground for an adjudication of bankruptcy.—*Leeds*, vol. 1, p. 521.

5. Idem. Does not Raise Presumption of Insolvency.

A member of a firm gave, in its name, on February 25, 1869, a warrant of attorney to certain creditors, Iselin & Co., to confess judgment on a debt due. Judgment was entered thereupon on the 30th of April following, execution issued, and stock of goods of the firm was levied upon by the sheriff and by him kept until ten

o'clock on the evening of May 1, 1869, when a transfer of forty-six thousand dollars' worth of account bills receivable, and other securities, was made by the debtor firm to Iselin & Co., and accepted by them in payment and extinguishment of the debt.

While the sheriff was in possession, one of the firm paid, on April 30, two thousand dollars to K., a fiduciary creditor, and on May 1, handed to him two thousand dollars of bills receivable, in addition to the first payment on such debt.

*Held*, The giving of the warrant of attorney, of itself, raised no presumption as to the insolvency of the debtor, and the naked paper gave no preference.—*Dibbles et al.*, vol. 2, p. 617.

#### 6. *Idem.* Does not Invalidate Lien.

The fact that judgment was entered upon a warrant of attorney does not invalidate a lien, if the creditor did not know of the failing circumstances of the debtor, and if it was not entered up "in contemplation of bankruptcy or insolvency."—*Weeks*, vol. 4, p. 364.

#### 7. *Idem.* Does not make Effectual a Security otherwise Invalid.

An intended security which would be ineffectual in the form of a mortgage or bill of sale, cannot be rendered effective through the device of a warrant of attorney given by a trader to a creditor, which enables him at pleasure to stop the debtor's business and prevent other creditors from getting any share of his available assets.—*Hood et al. v. Karper et al.*, vol. 5, p. 358.

#### 8. Joint Power must be Exercised Jointly.

The powers given by a letter of attorney to several persons jointly, cannot be exercised by one of the attorneys alone.—*In re Phelps, Caldwell & Co.*, vol. 1, p. 525.

#### 9. May be given by one Member on behalf of Firm.

One member of a firm or copartnership, on behalf of the firm, may execute a power of attorney to some third person, authorizing him to cast the vote of the firm in the choice of assignees.—*In re Barrett*, vol. 2, p. 533.

#### 10. Member of Bankrupt Firm cannot Act under.

A member of a bankrupt firm cannot represent claims against the estate.—*Miteldorfer*, vol. 3, p. 39.

#### 11. Scope of.

A power of attorney, in accordance with Form No. 26, in which the concluding words are "and with like powers to attend and vote at any other meeting or meetings of creditors, or sitting or sittings of the court, which may be holden therein, for any of the purposes aforesaid, or for the declaration of dividend, or for any other purpose in my interest whatever," does not authorize the filing of an opposition to the bankrupt's discharge by the attorney to whom the letter is given.

The claim that a power to attend and vote at meetings, and accept the appointment of assignee for his principal, gives the attorney authority to involve his principal in such a controversy as arises in opposition to the discharge of a bankrupt, is a misconception of the scope and purposes of the power.—*Creditors v. Williams*, vol. 4, p. 580.

#### 12. Acknowledgment not Necessary.

An acknowledgment of a power of attorney authorizing a person to appear for a creditor is not necessary.—*Powell*, vol. 2, p. 45.

#### 13. Contra.

An attorney cannot act for a creditor at meetings held in the course of proceedings in bankruptcy, unless authorized to do so by a letter of attorney acknowledged before a Register in bankruptcy or United States Commissioner.—*In re Wm. C. Christley*, vol. 10, p. 268.

#### 14. Power of Sale in Mortgage.

Where a mortgage conveys no title in the mortgage property, but is a mere security for a debt (as in Georgia) a power to sell given therein, is not coupled with an interest, and although irrevocable by the mortgagor, is revoked by his death or bankruptcy.

A sale of mortgage premises by a trustee under a power of sale contained in the mortgage, made after the mortgagor has become bankrupt, is void, *per se*.—*Lockett v. Hoge*, vol. 9, p. 167.

## PRACTICE.

See ADJUDICATION,  
ANSWER,  
APPEAL,  
ASSIGNEE,  
CERTIFYING QUESTIONS,  
COMPOSITION,  
DENIAL OF BANKRUPTCY,  
DISCHARGE,  
DISPUTED TITLE,  
EQUITY, PROCEEDINGS IN,  
EXAMINATION,  
EXEMPTION,  
EXPUNGING PROOF,  
HABEAS CORPUS,  
JURISDICTION, SUMMARY,  
LAW, PROCEEDINGS AT,  
PETITION,  
PROOF OF DEBT, VACATING,  
RECEIVER,  
STATE COURT,  
STAYING PROCEEDINGS,  
VERIFICATION.

### 1. Accounting by Voluntary Assignee.

The accounting by the voluntary assignee should be, under the decree, to the assignee in bankruptcy. There should be no subsequent account in a proceeding under State Legislation in a court of the State, unless some extraordinary reason requires a distribution under the laws of the State for the benefit of the general body of the creditors.—*Burkholder v. Stump*, vol. 4, p. 597.

### 2. Adjudication, Application for must be Made on Return Day.

On the 2d day of December, 1870, A filed a petition against the bankrupt. An order to show cause was granted, returnable December 10. The case was adjourned till May 31st, 1870, when, no one appearing, the proceedings were dropped. Subsequently B. another creditor, filed a petition alleging the bankrupt's indebtedness to him, and after alleging the filing and abandonment of A's petition, prayed that bank-

rupt might be adjudicated upon A's petition.

*Held*, B's application must be dismissed, on the ground that it should have been made on the return or adjourned day.—*Olmstead*, vol. 4, p. 240.

### 3. Appeal to Circuit Court.

In an appeal by a creditor from the District to the Circuit court, the party appealing should, within the ten days limited therefor, file a statement in writing of his claim, setting forth the same substantially as in a declaration for the same cause of action at law, to which the assignee should plead, and the cause proceed to trial as in actions at law, and prosecuted in the usual manner in this court, which, by Sections 24 of the Act and 25 of the General Orders in Bankruptcy, such claimants are required to do.—*Place & Sparkman*, vol. 4, p. 541.

### 4. Assignee, Removal of—Counsel to be Employed.

Register directed to employ counsel to represent the estate of the bankrupt at the hearing of the order to show cause why the assignee should not be removed.—*Price*, vol. 4, p. 406.

### 5. Idem—Petition for.

If a creditor, after proving his claim wishes to have the assignee already appointed removed, he can petition to the court in accordance with Form No. 40.—*In re James Carson*, vol. 5, p. 290.

### 6. Idem—Revisory Petition for.

On a revisory petition to the Circuit court for the removal of the assignee, the proper practice is to direct the District court to remove the assignee and to appoint some other competent person in his place.—*Perkins*, vol. 8, p. 56.

### 7. Idem—Before Register.

Motions to compel assignee to do his duty are properly made before the Register.—*Blaisdell et al.*, vol. 6, p. 78.

### 8. Books of Account, Obtaining Possession of.

To obtain possession of books of account an assignee must proceed by a bill in equity or action at law, in which the validity of said conveyances can be tested, and not by simple petition.—*Rogers, Assignee, v. Windsor*, vol. 6, p. 246.

**9. Discharge—Amending Petition for.**

A discharge granted to the surviving partner of a firm on an individual petition would discharge him from his copartnership, as well as individual liability; but the better practice would be to amend the petition so as to conform to the facts.—*In re Bidwell*, vol. 2, p. 229.

**10. Discontinuing Proceedings.**

If the petitioning creditor in a case of involuntary bankruptcy desires to discontinue proceedings, and have his petition dismissed, he may do so before adjudication, without giving notice to other creditors of the alleged bankrupt.—*Camden Rolling Mill Company*, vol. 3, p. 590.

**11. Idem.**

The proper practice in a case where all the creditors, except the owners of a few minor claims desire the dismissal of the proceedings is to require the deposit of adequate security for the payment of the claims of the non-assenting creditors to remain until any contingency about them is ultimately settled by the highest court to which a case can be taken, the claims to be prosecuted with reasonable diligence.—*In re Indianapolis, Cincinnati & Lafayette Railroad Company*, vol. 8, p. 302.

**12. Idem. Special Application for Order Necessary.**

That proceedings for adjudication of bankruptcy *in invitum*, can be discontinued only by an order of court on special application.—*Buchanan*, vol. 10, p. 97.

**13. Disposition of Property Pending Suit.**

Where assignee had commenced suit in the United States District court against lien-holders, the Bankruptcy court ordered the sale jointly by the assignee and the referee, of certain mortgaged property, and the deposit of proceeds in the treasury of the court to await the determination of the suit against the said lien-holders.—*In re The Columbian Metal Works*, vol. 3, p. 75.

**14. Examination of Bankrupt.**

In an examination of bankrupts by creditors under Section 26 of the act, where questions are objected to, the Register will pass upon the same, and permit the parties to take formal exceptions to his rulings. At the close, motion to strike out specified points, or to have excluded questions answered, will be entertained, and the ques-

tions be certified for decision by the judge, and proceedings thereafter be had in accordance with such decision.—*In re Samuel W. Levy & Mark Levy*, vol. 1, p. 105.

**15. Idem. Application for.**

A creditor to obtain an order according to form number forty-five for the examination of the bankrupt, under Section 26 of the act, must apply for such order by petition or affidavit, and show good cause for granting the same.—*In re Julius L. Adams*, vol. 2, p. 95.

**16. Idem.**

Before a bankrupt can be discharged he must be examined by the Register upon all matters touching his bankruptcy; the assignee or creditors may appear at such time and examine the bankrupt; should they desire any other time to examine him, the proper way is to petition to the court for that purpose. If the application is made directly to the Judge, instead of through the Register, it is not necessary that such application be sustained by any certificate of the Register as to the propriety of granting such order.—*In re Brandt*, vol. 2, p. 845.

**17. Idem.**

On filing the specifications in opposition to a bankrupt's discharge, the hearing upon the petition is at once transferred into court by Section 4 of the Bankrupt Act; therefore there cannot be any examination of the bankrupt by the creditors before a Register, on the application by the bankrupt for a discharge. If creditors desire a further examination of the bankrupt before the Register, to be used by them in opposing his discharge, they must proceed under Section 26 of said act.—*In re S. F. & C. S. Frizelle*, vol. 5, p. 119.

**18. Exemptions, Exceptions to.**

It is unnecessary for the creditors to except to the report of the assignee setting apart homesteads out of bankrupt's estate. Exception to his account for omission to charge himself with value of said real estate would suffice.—*Jackson & Pearce*, vol. 2, p. 508.

**19. Idem.**

Where creditors claim that unauthorized exemptions are exempted to be made to the bankrupt by the assignee, they must except, under General Order 19, to his re-

port within the requisite time, as respects household furniture, necessary articles, etc., but as to real estate the attempted exemption is void, no title thereto passes from the assignee, and creditors need not except to the report but only to the account of the assignee, and hold him responsible for any deficiency.—*In re Elizur Gainey*, vol. 2, p. 525.

#### 20. Idem.

Where a creditor objected to the exemption of homestead pursuant to the laws of Ohio, as exceeding in value the amount therein limited. Homestead ordered to be sold subject to the estate of the bankrupt, all surplus in value above that estate to be paid into the general fund.—*In re Watson*, vol. 2, p. 570.

#### 21. Expenses—Disputed Disbursements.

Attorneys for bankrupt applied to the Register for an order for the payment by the assignee, out of the assets, of a sworn bill of items of disbursements by them, of \$137.60, on account of clerk's, register's, and marshal's fees, for printing in the case, to which the assignee objected that the bankrupt had paid his said attorney's five hundred dollars for their services in the case, which was intended and fully sufficient to cover all expenses. The Register certified the question of payment of the bill to the court.

*Held*, That the proper way to bring the matter before the court was by petition, either by the assignee or bankrupt's attorneys, and reference would be ordered for taking testimony.—*In re Myron Rosenberg*, vol. 3, p. 74.

#### 22. Idem. Claim for Expenses of Counsel.

Where a creditor, who is also the assignee in bankruptcy, having employed counsel in proceedings before the adjudication, asks Register for an order for payment of the same by him, as assignee, in the ordinary distribution of bankrupt's estate,

*Held*, The Register cannot entertain the application in the first instance. There must be a petition to the court by the party, setting out the facts and asking the relief desired.—*In re Henry E. Dibblee, John J. Krauss and David P. Bingley*, vol. 3, p. 754.

#### 23. Idem. Of Marshal and Assignee must be Taxed by Register.

The United States marshal and Assignee are officers of the court, and must obey the orders of the Register, and their necessary expenses and disbursements made by them in the protection of the property of the bankrupt's estate, must be taxed by the Register and paid out of the estate.—*In re Carow*, vol. 4, p. 544.

#### 24. Fees of Register, Question as to.

A question as to charges of a Register in bankruptcy may be raised by an exception, or may, at the request of a party, be certified by the Register.—*Benj. Sherwood*, vol. 1, p. 345.

#### 25. Foreclosure—Injunction Against.

To enjoin the foreclosure of a mortgage in the State court on realty in the possession of the assignee, proceeding by the assignee should have been by bill in equity, and not by petition.

Leave granted for petition to be amended and filed as such bill.—*New York Kerosene Co.*, vol. 3, p. 125.

#### 26. Idem—Application for Leave to Foreclose.

In order to entitle a mortgagee to apply to the court for leave to foreclose his mortgage in another court, he must prove his debt in the Bankruptcy Court as a secured claim. The petition must allege this fact, the date and the amount of the debt proved; the mortgaged property must be fully described, and it must be stated what other incumbrances there are upon the property, and, if there are any, they must be fully described. It must state the actual value of the mortgaged property; if the value is greater than the incumbrances it must be made to appear that the rights of the petitioner cannot be fully protected by a sale by the assignee under the bankruptcy proceedings.

The petition must be signed and duly verified by the same officers and in the same manner as oaths in other cases to be used in the courts of the United States. When administered by a notary public the signature and notarial seal of the notary constitute a sufficient authentication.—*In re Philo R. Sabin*, vol. 9, p. 383.

#### 27. Injunction—Dissolution of.

Where an injunction had been issued



under the act by the District Court, staying proceedings against bankrupt in the State courts until the question of final discharge should be determined, and final discharge was granted and motion made to dissolve said injunction,

*Held*, That the motion was unnecessary, as the order for the final discharge terminated the injunction.—*In re Veeder G. Thomas, a Voluntary Bankrupt*, vol. 3, p. 88.

#### 28. *Idem*—Continuance of.

If proceedings in bankruptcy are duly prosecuted, a preliminary injunction issued by the Circuit Court may, in a proper case, be continued after answer, under such conditions as will preserve the priority of the creditor thus restrained, if the lien of his execution should ultimately be established.—*Irving v. Hughes*, vol. 2, p. 62.

#### 29. Notice—Upon Amendment of Schedules—Of Application to Remove Assignee.

After schedules are amended by adding new creditors, a new warrant should issue, to be served on the creditors whose names have been introduced by the amendment.

The notices should contain the names of all the creditors; if these have been properly published under the original warrant, they need not be repeated.

When an assignee has been chosen by creditors under the first warrant, notice of the application to remove him should be given, so that all the creditors who have proved their debts may be heard in such application.—*Perry*, vol. 1, p. 220.

#### 30. *Idem*—Of Preference as to Number, etc., of Creditors.

Where a reference is ordered to ascertain whether the petitioning creditors constitute the requisite proportion of the creditors of the alleged bankrupt, the clerk must send written or printed notices by mail, postage prepaid, to all of the creditors named in the list, at the addresses given in the list, of the time and place of the reference, and its object, at least ten days before the hearing; such notice to contain a copy of the list, with its names, places of residence, and amounts.—*Hymes*, vol. 10, p. 433.

#### 31. Opposing Discharge—Time for Filing Objections.

Where a creditor at the first meeting of creditors gave notice of intention to oppose the discharge, and filed objections, the reception whereof was opposed by bankrupt at that time,

*Held*, That a creditor who had proved his debt could file specifications in opposition to the discharge at any time before the period fixed by General Order 24.—*In re Adolph Baum*, vol. 1, p. 5.

#### 32. Order—For Dividend, Vacating.

Motion to vacate an order for a dividend may be made on proper papers and notice.—*In the matter of the New York Mail Steamship Company, Bankrupt*, vol. 3, p. 280.

#### 33. *Idem*—Nunc pro tunc.

Where a petition was filed since December 1st, 1873, in involuntary bankruptcy, and on March 18th, 1874, a memorandum was made by the judge on the papers signed with his initials "Let an order for adjudication be entered," but no action was taken for the entry of the order by counsel of either side, until after the 22d of June, 1874.

*Held*, An order *nunc pro tunc* could not then be entered, unless the petition was made to conform to the requirements of the amendments.—*In re Joseph M. Hill*, vol. 10, p. 133.

#### 34. *Idem*.

The bankruptcy of the defendant is no reason why the Superior Court of Georgia should not hear and decide upon a motion to correct its minutes and make them speak the truth, by entering *nunc pro tunc* upon its minutes the verdict of the jury rendered years previously in a suit against the bankrupt.—*Woolfolk v. Gunn*, vol. 10, p. 526.

#### 35. Parties.—To Individual Petition.

It is not necessary, in a case on an individual petition, there being no partnership assets, to make the other partners parties to the proceedings, or to have them brought in under General Order No. 18.—*In re Warren C. Abbe*, vol. 2, p. 75.

#### 36. *Idem*. To Bill and Sell Land Free from Incumbrance.

To a bill brought by the assignee in bankruptcy, to vest the title of the fraudu-



lent grantee in himself, that the land may be sold clear of incumbrances, the bankrupt and his wife are proper parties if they claim homestead and dower.—*Cox, Assignee, v. Wilder, et al.*, vol. 5, p. 443.

### 37. Proof, when taken *Ore Tenus*.

The 35th Section of the Bankrupt Act, which declares a sale, transfer, etc., not made in the usual and ordinary course of business of the debtor, shall be *prima facie* evidence of fraud, throws the burden of proof on the purchaser to sustain the validity of his purchase.

That in such a case the proofs may be taken *ore tenus* at the hearing.

That under the evidence in this case the sale was void.—*Wilson, Assignee, v. Stoddard*, vol. 4, p. 254.

### 38. Proof of Debt; Order Vacating must be made by the Court.

An order upon a creditor who has proved his debt, to show cause why the proof of the debt should not be vacated, and the record cancelled, should be made by the court and not by the Register.—*Comstock v. Wheeler*, vol. 2, p. 561.

### 39. *Idem*. Contesting.

Where a creditor who has security upon the bankrupt's property has made due proof of his debt, and his proof of claim is contested, the better, if not the only proper mode, of submitting the question in controversy, is to move the court to expunge the proofs made by the secured creditor, or to apply for a re-examination of the claim, under General Order No. 30.—*Jaycox & Green*, vol. 7, p. 803.

### 40. *Idem*.

Where an assignee in bankruptcy is not satisfied with the legality or correctness of any claim filed with him, the proper practice is for him to move to have it expunged under the 34th Rule of the General Orders in bankruptcy, and proceed as in that rule directed.—*In re Firemen's Insurance Company*, vol. 8, p. 123.

### 41. *Idem*. Postponing.

The Register may exercise the authority given by the Judge, by Section 23 of the Bankrupt Act, to postpone the proof of a debt offered at the first meeting, if he finds, upon the evidence, that its validity is doubtful.

The practice in this district, and in several others, for the Register to exercise this discretion, is sound, though he has no power either to admit or postpone a contested claim which he considers valid, but must report it to the court if the vote upon it could affect the choice of assignee.—*In re Burtusch*, vol. 9, p. 478.

### 42. Reference—To Master to Report upon Amount of Sale.

Where the mortgagors had stipulated to retain possession of goods, to sell and dispose of them as agents of the mortgagee, a national bank,

*Held*, In an action brought by the assignee in bankruptcy to set the mortgage aside, and recover the amount of deposits made by the mortgagor with the mortgagee, that the mortgage debt would be extinguished by sales and deposits with the mortgagee, by the mortgagors in possession, and no recovery could be had.

Master appointed to examine and ascertain the amount of sale, with instructions to report a decree in favor of the mortgagee, if any deficiency should be found.—*Hawkins, Assignee, v. First National Bank of Hastings*, vol. 2, p. 338.

### 43. *Idem*. To Determine Situation of Mortgaged Property.

A business corporation made a mortgage for a present passing consideration, of goods and chattels, part of which were in the State of New York, and part in New Jersey. The mortgage was filed in the former but not in the latter State.

*Held*, That the mortgage was valid and operative against creditors in New York, but not valid in New Jersey.

Reference ordered for the purpose of taking testimony to show what portions of the mortgaged property were severally in New York and New Jersey, when the mortgage was delivered.—*In re The Soldier's Business Messenger and Dispatch Company*, vol. 2, p. 519.

### 44. *Idem*. To Examine Proof of Debt.

Dividend was ordered on claims of certain lawyers for alleged professional services rendered bankrupt.

*Held*, Reference ordered to Register to examine into the proof of such debts, and the Register and assignee restrained from further proceedings until further order of

the court.—*N. Y. Mail Steamship Co.*, vol. 8, p. 280.

**45. Idem. For an Accounting.**

The defendant in an equity suit must account, before a master, for property received by him. Orders of reference to a master will be settled on notice.—*Benjamin, Assignee, etc., v. Graham*, vol. 4, p. 391.

**46. Idem. To Clerk to Determine Rates of Provable Debts.**

Where by a comparison of the list of creditors filed by the debtor, with the list of petitioning creditors, it appears that the provable debts due the creditors who have petitioned do not equal one-third of the aggregate provable debts due to such of the creditors of the debtor as hold provable debts exceeding the sum of two hundred and fifty dollars, an order will be made referring the matter to the clerk of the court to determine this issue on such evidence as may be introduced before him.—*Hymes*, vol. 10, p. 433.

**47. Relief. Application for, upon Judgment against Bankrupt.**

A creditor may petition the court for relief, to be paid a judgment against the bankrupt, out of moneys in the hands of the assignee in bankruptcy, but the proper way to bring the creditor into the case is by petition, setting forth the facts on which he relies for relief, and praying for the specific relief he seeks.

In the first instance, seeking affirmative relief, he must come in person and not by attorney.—*In re John Ogden Smith*, vol. 2, p. 297.

**48. Review, Application for.**

An appeal is not the proper method to take a question arising in the progress of a case in bankruptcy into the Circuit Court; it should be by a petition addressed to the Circuit Court, stating clearly and specifically the point or question decided in the District Court; that the petitioner is aggrieved thereby, and praying the Circuit Court to review and reverse the decision of the court below.—*In re Reed*, vol. 2, p. 9.

**49. Idem.**

The precise form in which the application allowed by the first paragraph of the 2d Section of the Act is to be made, is not regulated by statute. The practice of this

court is, the party desiring such review must present to this court a petition setting forth: 1st. So much of the proceedings in the District Court as is necessary to show the order complained of, the main facts upon which it was based, or the evidence, where the facts are in dispute. 2d. Pointing out specifically the supposed error or errors, and asking a review and revision or modification of the order complained of. A general allegation of error in an order without saying specifically in what the error consists, has been repeatedly held insufficient and will be disregarded.—*Casey*, vol. 8, p. 71.

**50. Idem, when Filed.**

A petition for revision of a decree in the United States Circuit Court must be filed within ten days from the entry of the order or decree sought to be revised, unless the time, on good cause shown for the delay, is enlarged by special leave of the court.—*Sweatt v. Boston, Hartford & Erie R. R. Co.*, vol. 5, p. 234.

**51. Sale of Perishable Property.**

An assignee desiring to sell property as perishable or because the title is in dispute, must apply to the court by petition, and not to a Register. *In re Graves*, vol. 1, p. 237.

**52. Idem. Proceeds of Property Taken on Legal Process.**

The net proceeds of the sale of property suffered to be taken on legal process in the hands of the sheriff, will be ordered to be paid to the assignee in bankruptcy, where it appears that the creditor had reasonable cause to believe that the firm was insolvent. *Black & Secor*, vol. 1, p. 353.

**53. Idem. Resale.**

Provisions proper in the order for a resale suggested.—*The Troy Woolen Co.*, vol. 4, p. 629.

**54. Idem. Order for, under Mortgage.**

The order for sale under mortgage by the Register should designate the place where the moneys (proceeds of the sale) shall be deposited, as a separate fund subject to the further order of the court. The Register will be directed to make the deed to the purchaser, and convey title under the order of the court free from certain liens in pursuance to Section 20 of the Act, and the

lien of the mortgage will be transferred from the property so sold to the proceeds of the sale.—*Hanna*, vol. 5, p. 292.

#### 55. *Idem.* Of Stock Pledged.

Where stock is pledged to secure call loans, the pledgee need not obtain leave of the court, on the bankruptcy of the pledgor, to sell the stock pledged and pay the surplus into court for the benefit of whom it may concern.—*Grinnell*, vol. 9, p. 137.

#### 56. Schedules, Obtaining for Preparation of.

On the due return of warrant by marshal in a case of involuntary bankruptcy, counsel for bankrupts moved for further time to prepare proper schedules, the number of creditors and non-adjustment of accounts having prevented their completion. No one opposing, Register certified the facts and asked for new warrant to issue.

*Held*, The proper course was for the Register to adjourn the meeting of creditors to a day certain, on the ground of non-service of notice to creditors, and to have directed service of new notice, by mail or personally, but not in respect of publication. No adjournment having been made, the proceedings have fallen through and new warrant must issue.—*In re John F. Schepeler, John D. Schepeler, and Leon Rosenplaenter, Involuntary Bankrupts*, vol. 3, p. 171.

#### 57. Securities—New Valuation of.

Where, under Section 20, the value of a security is agreed upon between the assignee and a creditor, and after such valuation new facts are developed, or occur, to show the valuation to have been erroneous, the court will order a new valuation to be made in cases where it will be manifestly in furtherance of justice.—*In re Frank F. Newland*, vol. 9, p. 62.

#### 58. Staying Proceedings in State Court.

Proceedings in an action in a State court will not be stayed simply on the ground that the plaintiffs have taken proceedings to have defendants declared involuntary bankrupts.

In such case an order of the Court of Bankruptcy, adjudging the defendants bankrupts, must be made before they are entitled to a stay of proceedings in the State court.—*Maxwell et al. v. Faxton et al.*, vol. 4, p. 210.

#### 59. Surrender by Bankrupt.

The bankrupts surrendered their property to the Register, who appointed a watchman to guard and keep it, and submitted a report of his action to the district judge for approval, who ordered United States commissioner to take testimony as to the facts.—*In re Bogert & Evans*, vol. 2, p. 585.

#### 60. Substitution of Creditor.

Until adjudication, the only parties to the proceedings are the petitioning creditors and the debtor. The other creditors must file a new petition, or petition to be substituted under the last clause of Section 42 of the Bankrupt Act.

Any creditor wishing to be so substituted must appear on the day to which the proceedings have been adjourned, and on that day petition to be substituted.—*Camden Rolling Mill*, vol. 3, p. 590.

#### 61. Suit to Ascertain Amount Due.

Where a creditor prosecutes his suit, after an adjudication of bankruptcy, merely for the purpose of ascertaining the amount due, he should cause that fact to appear of record and the judgment should be modified to correspond with the fact.—*Gallison et al.*, vol. 5, p. 353.

#### 62. Trustees, Appointment of.

Where creditors of a bankrupt had adopted a resolution appointing trustees under Section 43 of the Bankruptcy Act, the confirmation of which was opposed,

*Held*, That the parties desiring the confirmation of the resolution were the moving parties, and should serve their papers on the opposing parties, that they might answer them.—*American Cloth Co.*, vol. 3, p. 285.

#### 63. Verification, Failure to Sign.

When in an involuntary case the petitioners failed to subscribe the affidavit to the petition,

*Held*, The petition was defective, inasmuch as the forms prescribed by the Supreme Court required the affidavit and petition to be subscribed by petitioners. Defect incurable, since petition was not a petition *in propria forma*, such as could be amended.—*Moore & Brother v. Harley*, vol. 4, p. 242.

#### 64. *Idem.* Of Answer.

In courts where answers are verified in

common law actions, the answer to involuntary petitions in bankruptcy must also be verified.—*In re Findlay*, vol. 9, p. 83.

**65. Idem. Of List of Creditors.**

The list of creditors presented by the bankrupt under the Amendment of June 22d, 1874, must be sworn to by the bankrupt.—*In re Steinman*, vol. 10, p. 214.

**66. Idem.**

The list of his creditors filed by the debtor should be verified in like manner, by oath of the debtor.—*Hymes*, vol. 10, p. 433.

**67. Idem. Of Petition to Restrain Disposition of Property.**

A petition to restrain a debtor from disposing of his property between the granting of an order to show cause and the return thereof, may be verified by the affidavit of the attorney or agent.—*In re Fendley*, vol. 10, p. 251.

**68. Idem. Joint Petition by Separate Petitioner.**

That where several petitioners join in the petition in separate and distinct rights, each stands as a separate and distinct party to the litigation, so far as the right in which he prosecutes is concerned, and a verification by or on behalf of each petitioner is required.—*In re Simmons*, vol. 10, p. 254.

**69. Idem. Denial that Creditors Constitute Requisite Number.**

The 9th Section of the Act of June 22d, 1874, amendatory of the 89th Section of the Bankrupt Act, does not require the denial of the debtor, that the petitioners constitute the requisite proportion of his creditors, to be sworn to, but in the absence of a rule of the Supreme Court on the point, it is proper to require such denial to be verified by the oath of the debtor.—*Hymes*, vol. 10, p. 433.

**70. Writ of Error.**

Where the court gives to the jury what is claimed to be erroneous charges, the proper mode of bringing the questions before the Circuit Court is by writ of error. This writ must be sued out according to the provisions of the Judiciary Act in all respects, except that it must be applied for within ten days.—*Knickerbocker Ins. Co. v. Comstock et al.*, vol. 8, p. 145.

**PRECEDENTS.**

**Courts of Different Sovereignty.**

The United States Bankruptcy courts are not bound by the decisions of a State court, although the insolvent law under which such decisions are rendered, is similar in many of its provisions to the present Bankrupt Law.—*In re Knight*, vol. 8, p. 436.

**PRE-EXISTING INDEBTEDNESS.**

**1. Taking Mortgage to Secure.**

Where a creditor, knowing of the embarrassment of his debtor, takes a mortgage to secure a pre-existing debt, and also a credit given at the time of the execution of the mortgage, the mortgage, being void in part as to the pre-existing debt, must be held to be void as to the whole.—*Tuttle v. Truax, Assignee*, vol. 1, p. 601.

**2. Assignment of Claims.**

An assignment of a claim to secure a pre-existing indebtedness made when the bankrupt was insolvent, and not as a pledge of security, made at the time the indebtedness was contracted, and not as a part of the transaction, is a fraudulent preference, and a good ground for refusing a discharge.—*Foster*, vol. 2, p. 232.

**PREFERENCE.**

See ACT OF BANKRUPTCY,  
ASSIGNEE,  
CONFESSION OF JUDG-  
MENT,  
DISCHARGE,  
DISTRIBUTION,  
ENDORSER,  
FOUR AND SIX  
MONTHS,  
INTENT,  
JUDGMENT,  
PAYMENT,  
POWER OF ATTOR-  
NEY,  
PRIORITY,  
PROCURING AND SUFF-  
ERING PROPERTY  
TO BE TAKEN,  
REASONABLE CAUSE,  
SALE,  
SURETY,  
SURRENDER,  
TRANSFERS.

## PREFERENCE—

- I. *Attachment*, p. 555.
- II. *Bank Deposits*, p. 555.
- III. *Dealings with Bankrupt by Others than Creditors*, p. 555.
- IV. *Elements of Preference*, p. 555.
- V. *Execution*, p. 555.
- VI. *Insurance*, p. 555.
- VII. *Intent*, p. 555.
- VIII. *Judgment*, p. 556.
- IX. *Payments*, p. 556.
- X. *Return of Goods*, p. 558.
- XI. *Securing Debt*, p. 558.
  - (A.) *Generally*, p. 558.
  - (B.) *Mortgages*, p. 559.
  - (C.) *Warrant to Confess Judgment*, p. 560.
- XII. *Transfers*, p. 562.

I. *Attachment*.1. **Taking Property on.**

The taking of property on attachment is receiving a preference; the mere obtaining of judgment, however, is not.—*Stevens*, vol. 4, p. 367.

II. *Bank Deposits*.2. **Deposits Charged against Obligations.**

When a banker, in accordance with his usual custom, charges his depositor, in his deposit account, for the notes or other obligations as they fall due, the transaction is valid only as between the banker and the depositor, but in the event of the depositor becoming bankrupt, it might constitute an unlawful preference under said act.—*In re S. P. Warner et al.*, vol. 5, p. 414.

3. **Collections Used to Satisfy Execution against Depositor.**

Receiving money in its capacity as a bank from collections due the bankrupt, by the creditor, and handing the same to the sheriff, who applies it to the payment of the bank's judgment, is a fraudulent preference; so too, taking a cheque from the bankrupt for the amount on deposit and crediting the amount of the cheque on the bankrupt's note the day before taking judgment, is a preference, and void.—*Traders' Nat. Bk. of Chicago v. Campbell*, vol. 6, p. 353.

III. *Dealings with Bankrupt by others than Creditors*.4. **Creditor and Strangers.**

A creditor who has reasonable cause to believe his debtor insolvent, and who receives payment of his debt or security, necessarily knows or has reasonable cause to believe that he is thereby obtaining a preference which is forbidden by law; but persons other than creditors dealing with an insolvent, even if they have reasonable cause to believe him insolvent, are not on the same footing, inasmuch as they do not necessarily enable the debtor to contravene the act, or defeat any of its requirements.—*Darby's Trustees v. Lucas*, vol. 5, p. 437.

IV. *Elements of Preference*.5. **Six Elements.**

The insolvency, the intent to prefer and the doing or suffering the thing which works the preference, are the elements on the part of the debtor. The elements on the part of the creditor are the receiving or being benefited by such thing, the having reasonable cause to believe the debtor insolvent, and the having reasonable cause to believe that a preference is intended. These six elements must co-exist, but nothing else is necessary to make the transaction void, if challenged by the assignee in bankruptcy in due time.—*Kohlsaat v. Hoguet et al.*, vol. 5, p. 159.

V. *Execution*.6. **Taking Property on.**

The taking property on execution is receiving a preference.—*Stevens*, vol. 4, p. 367.

VI. *Insurance*.7. **Covenants in Lease.**

Insurance made upon house and furniture in pursuance of covenants in lease, is not a fraudulent preference.—*In re Rosenfeld*, vol. 2, p. 116.

VII. *Intent*.8. **Ultimate Intent of Creditor Immaterial.**

C & D, partners in business, became insolvent, and confessed a number of judgments in favor of creditors.

E & F, knowing of the insolvency of C & D, at the time their judgments were



taken out, caused executions to be issued upon these judgments, and then directed their agent to have the sheriff turn over the property to any agent whom the creditors might agree upon, or to the marshal, in case proceedings should be instituted under the Bankrupt Law.

C & D were subsequently adjudged bankrupts, and E & F made no resistance to the marshal's seizing the property levied upon under their executions, and with their offer to prove their debts in bankruptcy, they also offered to surrender any advantage or preference which they may have obtained by their proceeding against C & D.

*Held*, that E & F, having taken preferences contrary to the Bankrupt Law, cannot be allowed to prove their debts in bankruptcy. That it is immaterial what use these creditors may have ultimately intended to make of their preference, as the law does not trust the legal rights of one portion of the creditors to the judgment or good intentions of the others.—*In re J. J. & C. W. Walton*, vol. 4, p. 467.

#### 9. Not a Necessary Inference from the Act Done.

Only such transfers or liens are avoidable where they are made or suffered with intent to prefer the creditor, and it is not sufficient to show that this was the necessary consequence of the act suffered or done, and that the creditor knew the debtor's insolvent condition, and that the act must necessarily result in such a preference.—*Wilson v. City Bank of St. Paul*, vol. 9, p. 97.

### VIII. Judgment.

#### 10. Knowledge of Insolvency.

Where a man acts without knowledge of the condition of his debtor or of anything to create suspicion of his solvency, and obtains judgment, then the Bankrupt Law will not interfere with it.—*Campbell v. Trustees National Bank of Chicago*, vol. 8, p. 498.

#### 11. Without Execution.

The mere obtaining of judgment is not receiving a preference.—*Stevens*, vol. 4, p. 367.

#### 12. Judgment Perfected by Levy.

A judgment lien perfected by a levy on lands of the debtor, is good against the proceeds of sale of said lands in hands of

assignee in bankruptcy, and is not a fraudulent preference, where the judgment creditor had entered the judgment in question under warrant of attorney, given with a certain promissory note made by the bankrupt, it not being shown that the bankrupt was insolvent at the time he made said note, or that the creditor knew of his insolvency at or before levy made.—*Armstrong v. Rickey Brothers*, vol. 2, p. 473.

### IX. Payments.

#### 13. Adjustment of Accounts.

A, before insolvency, and not in contemplation of bankruptcy, indebted to B in the sum of two thousand four hundred and eleven dollars, sold to him an estate to the value of ten thousand dollars, and credited him on his books for the said sum of two thousand four hundred and eleven dollars, at the time of sale. Afterwards A, when insolvent and in contemplation of bankruptcy, had a settlement with agent of B, when the sum of two thousand four hundred and eleven dollars was deducted from the amount of purchase-money.

*Held*, That the payment was really made at the time of sale; that it was not an appropriation of payments, and that it was a legitimate transaction, and not a fraudulent preference within the meaning of the Bankrupt Act.—*Rosenfield*, vol. 2, p. 116.

#### 14. With Knowledge of Insolvency.

Where a trader knows, or in reason ought to know, that he is insolvent, and makes payments of an independent debt, not in the course of trade, and without creditor's knowledge of his insolvency, such payment constitutes a fraudulent preference, and prevents the granting of a discharge.—*In re Gay*, vol. 2, p. 358.

#### 15. When Fraudulent.

Debtor cannot discriminate among his creditors and prefer any one of them, but under the 39th Section commits an act of bankruptcy if he makes a payment to one creditor before another.

Two things are to be considered to make such payment fraudulent, first, the debtor must be insolvent; second, he must intend to prefer his creditor.

The *intent* constitutes the offense, not morally fraudulent, but merely made so by the act of Congress.



If a debtor honestly believes himself solvent and pays a just debt, such payment cannot be considered fraudulent, though bankruptcy ensue; otherwise, if he is aware of his insolvency.—*Root & Co. v. Mastick*, vol. 2, p. 521.

#### 16. Of Freight Debt.

Where the debtor, being insolvent, paid a freight debt in full by procuring an order from the railroad for and furnishing lumber,

*Held*, That the payment was a preference of a creditor, and an act of bankruptcy.—*Farrin v. Crawford et al.*, vol. 2, p. 602.

#### 17. No Distinction as to Fiduciary Debts.

There is no distinction between a fiduciary debt and an ordinary debt, as respects a payment thereof with intent to give a preference, so as to constitute an act of bankruptcy.—*In re Dibblee*, vol. 2, p. 617.

#### 18. Application of Bankrupt's Funds upon Note by Indorser.

Where defendant had indorsed the note of Sugarman & Frank, payable to the order of himself, which was discounted at the bank of Espy, Heidelberg & Co., and seven days before the same became due, the defendant received from Sugarman & Frank, who were then insolvent, bills and drafts, with instructions to apply them to the payment of the note held by Espy, Heidelberg & Co., and the same were accepted by those bankers as payment of the said note, which was taken up and canceled; *Held*, 1st, as Espy, Heidelberg & Co. were not apprised of the insolvency of Sugarman & Frank, that the payment to them was not a preference in fraud of the law; 2d, that they were not the parties benefited by the payment, as the defendant being solvent, his indorsement made them wholly safe; 3d, that the defendant was the person "to be benefited by the payment," whether made before or after maturity of the note, and that, he having reasonable cause to believe them insolvent at the time of such payment, any appropriation of their means to pay or indemnify him is condemned by the statute, and that defendant was liable to the assignees of the bankrupts for the amount paid by him to Espy, Heidelberg & Co.—*Daniel Ahl, Jr., and Alexander Buchman,*

*Assignees of Sugarman & Frank, v. Samuel Thorner*, vol. 3, p. 118.

#### 19. Receiving Accounts to Apply on Indebtedness, etc.

Bankrupts owed about ten thousand dollars on ten promissory notes given to creditor at one transaction, and subsequently became unable to pay their debts in the ordinary course of business, as men usually do. Creditor having reason to believe this pressed his claim, and (1) Received an account from debtors against a third party to collect and apply on the indebtedness; (2) Gave another party an order on the debtors for money, part of which they paid, to apply on the indebtedness; (3) Obtained and received goods from the debtors to be applied in like manner; (4) Indorsed the several sums so received, on three of the notes, as of a date different from that on which the indorsement was made and the amounts received, and (5) Failed to surrender the property and money so received to the assignee in bankruptcy. Creditor sought to prove claim in bankruptcy for the balance of the indebtedness.

*Held*, The creditor received a preference contrary to the provisions of the bankruptcy statute.—*Kingbury et al.*, vol. 3, p. 317.

#### 20. To Redeem Pledge.

Where bankrupt had, by his agent, unlawfully used funds coming into his hands, belonging to one Mayer, and had offered his draft, due in thirty days, for the money thus appropriated, Mayer refused to accept it, and instructed his attorneys to commence suit by attachment at once; the agent proposed to turn over certain goods to secure the payment of the money made use of, which the attorneys accepted. Neither the bankrupt, his agent, nor the attorneys being in any way aware of the insolvency of the bankrupt.

*Held*, As there is no evidence that any creditor or purchaser was deceived or misled, it is good between the parties.

This being a valid pledge of goods, the money paid to redeem the goods from that pledge cannot be recovered.—*Jenkins, Assignee, v. Mayer*, vol. 3, p. 777.

#### 21. In Expectation of Continuing Business.

The proposition is untenable that a debtor ceases to be insolvent because, being

unable to pay his debts as they mature, creditors have agreed to extend the time of payment; also, that the payment of a debt by an insolvent cannot be regarded as a preference, if made with the hope and expectation by the debtor that he will eventually be able to pay.—*Rison, etc., v. Knapp*, vol. 4, p. 349. \*

## 22. More than Four Months before Commencement of Proceedings.

A payment by a debtor who is in insolvent circumstances more than four months before the filing of the petition by or against him, although made to the creditor by way of preference, will be sustained against the assignee under the provision of the first clause of the 35th Section of the Bankrupt Act of 1867. Hence, where this state of facts exists in an action brought by the assignee in bankruptcy to recover money thus paid, judgment must be rendered for the defendant.—*Maurer, Assignee of A. Frantz, v. E. Frantz*, vol. 4, p. 431.

## 23. By Bill of Sale.

Where an insolvent debtor executed a bill of sale to a creditor who had obtained the levy of an attachment after notice of the debtor's insolvency,

*Held*, The same was a violation of the Bankrupt Act. Its inevitable effect was to give a preference.—*Gregg*, vol. 4, p. 456.

## 24. To Holder of Overdue Note with Solvent Indorser.

A payment by one insolvent, which would otherwise be void as a preference under Sections 35 and 39 of the Bankrupt Law, is not excepted out of that provision because made to a holder of a note overdue, on which there is a solvent indorser whose liability has been fixed by protest and notice.—*Bartholow v. Bean*, vol. 10, p. 241.

## X. Return of Goods.

### 25. Pending Negotiations.

Pending negotiations for an extension of time on debtor's business paper, a piano ordered for a customer who refused to receive it, was returned to the sellers.

*Held*, That the return thereof was not a preference of creditors, or an act of bankruptcy.—*Doan v. Compton & Doan*, vol. 2, p. 607.

## XI. Securing Debts.

### (A.) Generally.

### 26. Voluntary Act of Debtor.

Security given to a creditor by an insolvent debtor, out of the ordinary course of business, cannot be held valid simply because it proceeded from the voluntary act of the debtor without previous communication with the favored creditor, either as to the security or debtor's financial condition.—*Graham, Assignee, v. Stark*, vol. 3, p. 357.

### 27. Bona Fides.

Where a man acts without knowledge of the condition of the party or of anything to create suspicion of his solvency, and obtains a judgment or security, then the Bankrupt Law will not interfere with it.—*Campbell, etc., v. Traders' National Bank of Chicago et al.*, vol. 3, p. 498.

### 28. Pressure of Creditor not an Excuse.

The doctrine of preference by a creditor to force the giving of security for the payment of a debt is not applicable under the present Bankrupt Act, and it is no answer when a debtor mortgages his property to secure such a debt to say that he was "pressed" to do it.—*Rison, etc., v. Knapp*, vol. 4, p. 349.

### 29. Indemnifying Sureties.

Where the obligor on a bond, in order to indemnify his sureties, obtains securities from one of his debtors and turns them over to sureties, the transaction is a *preference* between the parties under the first clause of the 35th Section of the Bankrupt Act, and not a transfer under the second clause, and the four months' limitation applies.—*Smith v. Little*, vol. 9, p. 111.

### 30. Collaterals may be Taken at the time Debt is Incurred.

The Bankrupt Act does not prohibit the loaning of money to men in embarrassed circumstances, if there is no fraudulent intent, and it is perfectly proper for the lender to take collaterals *at the time the debt is incurred*.—*Tiffany, Trustee, v. Boatman's Savings Inst.*, vol. 9, p. 245.

### 31. Change in Securities.

Giving a deed of trust upon property, to secure a debt previously secured by a mechanic's lien, is merely a change of se-

curities and not a fraudulent preference given to the mechanic having the lien.

A banker held as a special deposit certain bonds of a customer, and without the custodian's knowledge the banker substituted for the bonds left with him a note and mortgage. The banker failed and the customer, on being notified of the substitution, ratified the act—after the banker's insolvency was notorious, and within thirty days of the filing of the petition against him in bankruptcy. On a bill filed by the assignees in bankruptcy of the banker to recover the note and mortgage substituted,

*Held*, The substitution was valid, it being a mere exchange of property and not calculated in any way to prefer a creditor.—*Cook v. Tullis*, vol. 9, p. 433.

### 32. Consignments upon Advances.

Shipments of cotton by an insolvent debtor, after his insolvency, to his commission merchant, who makes advances of money at the time, is not a preference, but in effect a sale of so much cotton to procure the necessary means to realize upon his assets, although he may be indebted to the commission merchant at the time.—*Harrison v. McLaren*, vol. 10, p. 244.

### (B.) Mortgages.

### 33. Knowledge of Insolvency by Creditor Necessary to Invalidate.

Although a security given to a creditor by a mortgage be out of the usual course of business of the debtor, yet unless the creditor know of the insolvency of the debtor, or have reasonable cause to believe him insolvent, the security will be valid, and may be enforced, although the debtor may have been in fact insolvent at the time the security was given.—*John R. Lee, Assignee, v. German Savings Inst.*, vol. 8, p. 218.

### 34. Idem, by Debtor Immaterial.

To render a mortgage void under the 35th Section of the Bankrupt Act, it is not necessary that the debtor knew or believed himself insolvent. The section treats of insolvency as a condition of fact, not of belief, and with knowledge of which and its consequences, he is chargeable in law.

It follows as a logical sequence, that when a man, insolvent in fact, gives a mortgage to one existing creditor, he does

so with a view to give him a preference.—*Hall, etc., v. Wager & Fales*, vol. 5, p. 182.

### 35. Reasonable Cause to Suspect Insolvency.

A firm had notes past due and falling due without available means to meet them, and obtained loans for the purpose from parties liable on certain of the firm notes and private notes of the members, giving two new notes for the loans so obtained, and securing payment thereof by executing a mortgage of all the firm property. The firm was subsequently adjudged bankrupt, on the petition of a creditor in involuntary bankruptcy, and assignee in bankruptcy brought action in equity to set aside said mortgage as constituting a fraudulent preference under Section 35 of the Bankrupt Act. The mortgagees swore that they believed the firm to be solvent at the time such mortgage was executed, and a member of the firm swore that he believed the same, and had not then contemplated insolvency or bankruptcy.

*Held*, The firm was actually insolvent when the said mortgage was executed, and the mortgagees had reasonable cause so to believe it, and it operated to give such preference.—*John Q. Scammon, Assignee of Chadbourne & Nowell, v. Thos. H. Cole and Edward H. C. Hooper*, vol. 3, p. 393.

### 36. Idem.

Debtors, merchants, knew themselves to be insolvent, but represented to creditors on debts past due that they were solvent. The creditors, however, exacted as security a chattel mortgage, dated May 9, 1868, on a large portion of debtors' goods, and on a failure to receive payment of an installment thereunder, took possession on the 15th of July, 1868, under the mortgage, sold the goods, and applied the proceeds. Thereafter, on August 3, 1868, debtors filed petition in bankruptcy, and were duly adjudged bankrupts. Assignee in bankruptcy brought action against the creditors to recover the value of the goods so sold.

*Held*, Said mortgage was, within the meaning of Section 35 of the statute, made by the bankrupts with a view to give a preference.

The creditors had reasonable cause to believe that their debtors were insolvent

when the mortgage was made, and it constituted a fraudulent preference.—*Driggs, Assignee, v. Moore*, vol. 3, p. 602.

### 37. Power to Sell and Replace Stock.

Where a mortgage was made on a whole stock of goods, with the understanding that the mortgagors would sell the stock then on hand, and put in more, from time to time, as they might be able or wish to,

*Held*, That the mortgage as against creditors, was not valid.—*Kahley et al.*, vol. 4, p. 378.

### 38. Authority to take Possession under Chattel Mortgage.

Though a mortgage be valid as to property then in possession, in a case where a mortgage subsequently given to cover the property afterwards acquired would have been void under the Bankrupt Law, the authority given in the mortgage does not enable the mortgagee, by taking possession of such property, to hold it as against the assignee. This would be, in effect, a preference, and against the spirit of the Act.—*Eldridge*, vol. 4, p. 498.

### 39. Chattel Mortgage Void under State Law.

A chattel mortgage void as against creditors under the State law, and under which the mortgagee had taken possession, having at the time reasonable cause to believe his debtor insolvent is also void as against the assignee in bankruptcy. Even though possession of the property was taken before commencement of proceedings in bankruptcy, and was in accordance with the provisions of the mortgage, it operates as a preference, and therefore void as against the other creditors, if done within the time limited by the present Bankrupt Act.—*Harvey, Assignee, v. Crane*, vol. 5, p. 218.

### 40. Mortgagees Liable as Sureties.

A mortgage given to secure the payment of two promissory notes, the consideration of which being pre-existing debts of the bankrupt, for almost all of which the mortgagees were liable either as sureties or indorsers, is void when it appears that it was made within four months next preceding the filing of the petition in bankruptcy, for the express purpose of giving a preference; that the mortgagors were insolvent, and the mortgagees had reasonable cause to believe that the mortgagors were

insolvent at the time of the execution of the mortgage, and that the conveyance was made in fraud of the provisions of said Act.—*Scammon v. Cole et al.*, vol. 5, p. 257.

### 41. Change in Substance of Deeds.

Where a security, by way of mortgage, is given more than four months before bankruptcy, a change in the former substance of the deeds made within four months of the bankruptcy will be protected if no greater value were put into the creditor's hands at that time than he had before.—*Sawyer et al. v. Turpin et al.*, vol. 5, p. 339.

### 42. Severance of Mortgage.

A creditor advanced money within four months of proceedings in bankruptcy, and took a mortgage of the debtor's stock in trade, first, as security therefor; secondly, another (antecedent) debt due to himself; and, thirdly, an overdue note taken up and held by the indorser, by whose request it was inserted in the mortgage.

*Held*, That the mortgage was void as against the assignee, because intended to secure a pre-existing debt, etc.

*Held*, On appeal by the mortgagee, that the mortgage could be severed and sustained in part, and denied as to the rest.—*Stowe ex parte Godfrey*, vol. 6, p. 429.

### 43. Execution of Agreement to Give Security when Required.

A mortgage given in pursuance of a parole agreement to give security, if required, will not hold against the assignee in bankruptcy if the act of giving the mortgage would have been a preference at the time it was given, but for the agreement. Whether or not, a written promise to convey certain definite property as security, given when the debt was contracted, would save the mortgage afterwards given, from being a preference, *quære?*—*McKay & Aldus*, vol. 7, p. 230.

### (C.) Warrant to Confess Judgment.

### 44. Knowing his Insolvency.

A trader, being insolvent, gave his promissory notes to a creditor for balance due, with warrants of attorney to confess judgment thereon, and separate judgments on each note were entered upon and execution issued, and the goods levied upon by the sheriff. While in the sheriff's hands a

constable also levied thereon in execution issued upon judgments rendered by a justice of the peace, upon two promissory notes of the debtor, given, prior to insolvency, to two separate creditors.

*Held*, That the giving of the first notes constituted a preference of creditor in fraud of the Act. *Aliter*, as to the other notes.—*Haughey, Assignee of Reeder, v. Albin*, vol. 2, p. 399.

#### 45. *Idem*. An Act of Bankruptcy.

Where the bankrupt, being indebted to a creditor on promissory notes due and to become due, gave him a promissory note payable one day after date, with warrant to confess judgment, and judgment thereon was obtained in November, and execution levied on bankrupt's goods before proceedings in bankruptcy instituted by other creditors in January following,

*Held*, That such act of the bankrupt was an act of bankruptcy, and sought to give a preference to a creditor.—*In re William H. Fitch et al. v. George B. McGie, Ex parte Sanger*, vol. 2, p. 531.

#### 46. *Idem*. Mere Giving of Warrant Raises no Presumption of Insolvency.

A member of a firm gave, in its name, on February 25, 1869, a warrant of attorney to certain creditors, Iselin & Co., to confess judgment on a debt due. Judgment was entered thereupon on the 30th of April following, execution issued, and the stock of goods of the firm was levied upon by the sheriff and by him kept until ten o'clock on the evening of May 1, 1869, when a transfer of \$46,000 worth of accounts, bills receivable, and other securities, was made by the debtor firm to Iselin & Co., and accepted by them in payment and extinguishment of the debt.

While the sheriff was in possession, one of the firm paid, on April 30, \$2,000 to K., a fiduciary creditor, and on May 1, handed to him \$2,000 of bills receivable, in addition to the first payment on such debt.

*Held*, The giving of the warrant of attorney, of itself, raised no presumption as to the insolvency of the debtor, and the naked paper gave no preference.

If the firm knew that it was insolvent or that it contemplated insolvency, when so suffering its property to be taken in a man-

ner that necessarily resulted in giving Iselin & Co. a preference, then it intended such preference in judgment of law, and committed an act of bankruptcy.—*Dibble*, vol. 2, p. 617.

#### 47. Reasonable Cause to Suspect Insolvency.

A creditor who knows that his debtor cannot pay all his debts in the ordinary course of his business, has reasonable cause to believe his debtor to be insolvent, and will not be allowed to secure by confession of judgment, and the levy of executions, any preference over other creditors, and the assignee in bankruptcy may recover the property seized and taken upon executions under such judgments, or the value thereof.—*Wilson, Assignee, v. Brinkman et al.*, vol. 2, p. 468.

#### 48. *Idem*. Evidenced by Acts.

*Held*, Where a firm was insolvent, and at the time of giving a warrant of attorney authorizing a confession of judgment, had reason to believe that they could not pay their debts in the ordinary course of business, that the giving of a note and power of attorney to confess a judgment operated as a preference.

That it is to no purpose that a man says, when he is insolvent and signs a note and warrant of attorney and gives it to his creditor, the effect of which is to enable that creditor to enter up judgment and levy on his property, that he did not intend to give a preference.

That when a person suspects the solvency of his debtor, and in consequence of that suspicion obtains property and money, and thereby a preference, and it turns out in fact that his debtor is insolvent, that he may be said to be in the predicament contemplated by the Bankrupt Law, he has reasonable ground to believe that his debtor is insolvent, and cannot avail himself of a judgment or security so obtained.—*Campbell, etc., v. Traders' National Bank of Chicago et al.*, vol. 3, p. 498.

#### 49. *Idem*.

Where a creditor has reasonable cause to believe his debtor insolvent, he acquires no preference in bankruptcy over other creditors of the debtor, by taking a promissory note with warrant of attorney to confess judgment, and levying an execution



issued on said judgment note, on the stock of goods.

The execution being levied a few days over one month before proceedings in bankruptcy were commenced against the debtors, the limitations of the 35th and 39th Sections of the Bankrupt Act do not apply.—*In re Terry & Cleaver*, vol. 4, p. 126.

#### 50. Idem.

Where a creditor, who has been carrying and renewing a note, enters up judgment by virtue of a warrant of attorney attached, and issues execution, the debtor having three days before absconded, leaving his property and creditors unprotected, the business community and newspapers being in speculation as to his departure and means, and the creditor having come to the conclusion that "there was something wrong," and that his interests, as well as those of the surety on the note, require that judgment should be entered, he obtains such preference as is avoided by the 35th and 39th Sections of the Bankrupt Act.—*Golson v. Neihoff*, vol. 5, p. 56.

#### 51. Entering Judgment after Insolvency.

Where the note and warrant of attorney on which a judgment was founded, were given within four months before the proceedings in bankruptcy, being the agreed security for a loan made at the time, and it conclusively appeared that the creditor had no reasonable cause to believe the debtor to be insolvent, though he knew him to be so at the time of entering the judgment, the judgment is valid.—*Vogle, etc., v. Lathrop*, vol. 4, p. 439.

#### 52. Idem. Within Four Months of Commencement of Proceedings.

Where a debtor gave to his creditors several bonds with warrants of attorney to confess judgments, for money lent in good faith, when neither the borrower or lender had reasonable cause to believe that the debtor was insolvent or intended any fraud upon the provisions of the Bankrupt Act,

*Held*, That judgments subsequently entered thereon, within four months of the date of filing petition in bankruptcy, and where both the debtor and the creditors had cause to believe the debtor to be insolvent, and intended a fraud upon the provisions of the act, were fraudulent preferences.—*In re F. C. Lord*, vol. 5, p. 318.

#### 53. Idem.

A judgment note given for a valuable consideration more than four months before the commencement of proceedings in bankruptcy, on which judgment is entered and execution issued within four months of the commencement of proceedings in bankruptcy, is valid and binding.—*Steele et al. v. Turner's Assignee*, vol. 10, p. 580.

#### 54. Failure to Record till within Four Months.

Where a creditor, on the loan of money, takes a confession of judgment from his debtor as security, but fails to enter it of record until within the four months, it may be set aside by the assignee in bankruptcy.—*Clark v. Iselin & Co.*, vol. 9, p. 19.

#### 55. Knowledge of Attorney Imputable to Principal.

When one constituted attorney for the collection of a debt procured from the debtor a judgment note for the amount in his own name, and entered it, knowing that the debtor was insolvent, there being a clear intent to give a preference within the meaning of the act, though the fact of insolvency was not directly known to the real creditors, such a knowledge is imputable to them and the judgment is invalid.—*Vogle v. Lathrop*, vol. 4, p. 439.

### XII. Transfers.

#### 56. As Evidence of Fraudulent Intent.

The transfer by a debtor of a large portion of his property, while he is insolvent, to one creditor, without making provision for an equal distribution of its proceeds to all his creditors, necessarily operates as a preference to him, and must be taken as conclusive evidence that a preference was intended, unless the debtor can show that he was at the time ignorant of his insolvency, and that his affairs were such that he could reasonably expect to pay all his debts. The burden of proof is upon him in such a case, and not upon the assignee or contestant in bankruptcy.—*Toof et al. v. Martin*, vol. 6, p. 49.

#### 57. Assignment of Claim.

An assignment of a claim to secure a pre-existing indebtedness made when the bankrupt was insolvent, and not as a pledge of security, made at the time the indebtedness was contracted, and not as a



part of the transaction, is a fraudulent preference, and a good ground for refusing a discharge.—*In re B. N. Foster*, vol. 2, p. 232.

#### 58. *Idem.* Necessary Effect

The necessary effect of a conveyance to creditors in satisfaction either in whole or in part of a pre-existing debt, by one who knows that he is insolvent, is a preference in fraud of the Bankrupt Act, and he must be held to have intended this as a necessary result of his action.—*Martin v. Toof, Phillips & Co.*, vol. 4, p. 488.

#### 59. Made in Pursuance of Old Agreement.

In an action of trover brought by an assignee in bankruptcy against a creditor, to recover the value of certain property transferred by the bankrupt to him within four months preceding the adjudication of bankruptcy, it not being shown that a preference of creditors or a fraud on the act was thereby intended, and that the transfer was made in pursuance of an agreement entered into long before,

*Held*, That the assignee could not recover.—*Re Winthrop M. Wadsworth, Assignee of Robert R. Treadwell, v. Edwin S. Tyler*, vol. 2, p. 816.

#### 60. By Firm not Avoidable by Assignee of one Partner.

Where the members of a firm which is insolvent make a conveyance of all their joint personal property to creditors who have reasonable cause to believe the firm to be insolvent, and within four months thereafter, one of the firm is adjudged a bankrupt on his own petition, the conveyance to such creditors by all the partners does not constitute a preference which the assignee of the bankrupt partner can avoid.—*W. J. Forsaith, Assignee, v. George Merritt et al.*, vol. 3, p. 48.

#### 61. Made under Pressure.

Where a bankrupt transfers his stock and book accounts, in satisfaction of a pre-existing debt, to a creditor who threatened to attach his stock, and break up his business, such a conveyance is a preference under the Bankrupt Law, though made under pressure.—*Re Charles W. Batchelder*, vol. 3, p. 150.

#### 62. Under Warehouse Receipt—General Assignment.

The assignee of B brought suit against D and E to recover the value of certain personal property which had been disposed of by the defendants. Against D, the claim was made on the ground that he had received certain goods which were transferred to him by a warehouse receipt.

As against E, the claim was, that, knowing the insolvency of B, he received under general assignment to himself all the remaining property of B.

The evidence showed that D transferred the property in his possession under the warehouse receipt to E, as the general assignee.

*Held*, That D was not liable as transferee of the warehouse receipt, but only for money received from E, the assignee, as a preferred creditor.

That as E was not a creditor of the bankrupt, and as he had distributed some of the property to the preferred creditors under the general assignment, before the commencement of proceedings in bankruptcy, he was not chargeable with the value of any property turned over to lawful creditors of the bankrupt, but was liable for the balance only which shall appear to be in his hands after a proper accounting with the assignee in bankruptcy.

—*Charles Jones, Assignee, of Wm. M. Rice v. Frank Kenney and C. C. Wilson et al.*, vol. 4, p. 650.

#### 63. The Intent Essential.

The Bankrupt Act imposes no obligation upon a debtor to apply voluntarily to be adjudged a bankrupt, under any circumstances. Only such transfers are avoidable under Section 35 and 39 of the Act, wherein the transfer was suffered or made by the debtor *with intent* to prefer the creditor, and it is not sufficient to show that this was the necessary consequence of the acts suffered or done, and that the creditor knew of the insolvent condition of the debtor, and that the act, if permitted, must necessarily result in such preference.—*Wilson v. City Bank of St. Paul*, vol. 9, p. 97.

#### 64. *Idem.*

A transfer of property, made at or about the time of advances, and in payment

therefor, will not subject the debtor to proceedings in involuntary bankruptcy; but if made some time before the advances, it is a preference which will subject him to such proceedings.—*Pierson*, vol. 10, p. 107.

## PREFERRED CREDITOR.

See ASSIGNEE,  
CLAIMS,  
DEBTS,  
PREFERENCE,  
PROOF OF DEBT,  
PROVABLE DEBT,  
SURRENDER,  
VOTE.

## PRESENT CONSIDERATION.

See ADVANCES.

## 1. Trust Deed Valid against Concealed Homestead Exemption.

The *cestui que trust* under a trust deed to secure present loans and subsequent advances will be protected as to such advances against the claims of the borrower, who has declared the land a homestead, and has subsequently obtained such advances, and fraudulently concealed his declaration of homestead.—*In re Haake*, vol. 7, p. 61.

## 2. Mortgage partly for Past Advances.

Where the honest intent was clear and a mortgage was made for past as well as future advances, but mainly for the latter, and it appeared that the past advances were already secured upon property reasonably believed to be fully adequate, the mortgage was upheld although it turned out that the former security had not been quite sufficient.—*McKay & Aldus*, vol. 7, p. 230.

## 3. Mortgage to Enable Debtor to Continue Business.

Where debtor showed that certain transfers were by way of mortgages. That both mortgages were given to secure the same sum (\$1,080), borrowed by the debtor on the 29th day of October, 1870, from the mortgagee in order to relieve the debtor's stock in business from a contested attachment, and thus enable the debtor to go on in his business. That the loan was specifically to settle this attachment suit, and also to pay the only overdue paper of the debtor, known by the mortgagee to be

outstanding, except only such secured paper as the mortgagee already had,

*Held*, That as the mortgages were based upon a present consideration, and were neither given nor received with any intent to delay creditors, they did not constitute an act of bankruptcy.—*Sanford*, vol. 7, p. 351.

## 4. Time of Consideration Passing.

Although the mortgage was recorded only the day before the petition in bankruptcy was filed, the evidence showed that the consideration did not pass until the mortgage was recorded.

*Held*, That the transaction was an inchoate one, not consummated until the mortgage was recorded, but still in point of time, a unit; being marked by good faith, the consideration ought to be regarded as passing when the mortgage was recorded.—*Perrin & Hance*, vol. 7, p. 233.

## PRESUMPTION OF LAW.

## Against Validity of Preference.

See NOTICE.

The purpose of the Bankrupt Act being to enforce the equal distribution of the estate, every act of an insolvent that tends to defeat that purpose should be construed strictly as against him, and courts should indulge every presumption permissible by the well-settled rules of law, to secure the full benefit of this cardinal principle of the law.—*Hall, etc., v. Wager & Fales*, vol. 5, p. 182.

## PRINCIPAL AND AGENT.

See ACT OF BANKRUPTCY,  
AGENT,  
HUSBAND AND WIFE,  
KNOWLEDGE OF INSOLVENCY,  
PARTNERSHIP,  
REASONABLE CAUSE.

A party dealing with an agent may resort to the principal to compel performance of the agreement of the agent, unless the contract was made exclusively on the credit of the agent.—*In re Troy Woolen Co.*, vol. 8, p. 412.

## PRINCIPAL AND SURETY.

See SURETY.

The liability of the principal to his surety, within the meaning of the Bank-

rupt Act, must be considered as having been contracted when the instrument was signed.—*In re Perkins et al.*, vol. 10, p. 529.

PRINTER'S FEES.

See COSTS AND FEES.

PRIORITY.

See CLAIMS,  
COSTS AND FEES,  
CREDITORS,  
DEBT,  
DISTRIBUTION,  
DIVIDEND,  
LIEN,  
PAYMENTS,  
PETITION,  
RENT,  
SECURED CRED-  
ITOR,  
TAXES,  
UNITED STATES,  
WAGES.

1. Liens—Priority Between.

A prior lien gives a prior claim, and the District Court may ascertain and liquidate such a lien.—*Winn*, vol. 1, p. 499.

2. Idem. Always Preferred Claims.

The assignee in bankruptcy must recognize as a preferred claim any valid lien, even the costs of an attachment, if such costs are a lien by the State law.—*Hay et al.*, vol. 7, p. 344.

3. Idem. By Attachment, etc.

Liens by attachment or execution obtained in the State Courts, prior to proceedings in bankruptcy, take preference to the claims of the assignee, unless an intent to evade the Bankrupt Act is shown.—*Appleton v. Bowles et al.*, vol. 9, p. 854.

4. Costs on Attachment.

Costs on attachment, if a lien by State law, are recognized as a preferred claim.—*Hay et al.*, vol. 7, p. 344.

5. Idem. Of Bankruptcy Proceedings.

The costs and expenses of the bankruptcy proceedings are entitled to priority of payment out of the funds in court derived from the sale of the property.—*In re Whitehead*, vol. 2, p. 599.

6. United States, Claim of, on Revenue Bond.

Where individual members of a co-partnership signed internal revenue tobaccoists' bonds as accommodation sureties, and the firm subsequently being adjudged bankrupt, the collector of internal revenue holding the bonds, the conditions of which had been broken, proved the debts thereon in bankruptcy, and claimed payment out of the partnership assets by priority of distribution to the United States,

*Held*, That the debts were individual debts, and the claim of the United States to prior payment out of partnership assets was not valid, but it would be good against individual assets.—*In re Webb & Johnson*, vol. 2, p. 614.

7. Idem. When Entitled to.

Under Section 28 of the Bankrupt Act, the United States is entitled to a preference in the distribution of the estate of the bankrupt, after the payment of the fees, cost, and expenses of suits and the several proceedings in bankruptcy, on all debts due it, whether legal or equitable.

This preference attaches when the debt due is incurred by way of penalty for the violation of the revenue laws.—*Rosey*, vol. 8, p. 509.

8. Judgment, in Federal Court.

The plaintiff, in judgment obtained in the Federal court on which execution issued, and under which the marshal sold, is entitled to the proceeds of such sale, although that judgment, execution, and levy under it was subsequent to the judgment, execution, and levy of the process from the State court.—*Jordan*, vol. 3, p. 182.

9. Idem. Not Recorded till Subsequent to a Later Mortgage.

Where a creditor claims a lien by virtue of a judgment against the bankrupt, recovered on 5th November, 1866, but which was not recorded in the clerk's office until 16th October, 1867; and another creditor holds a mortgage executed by bankrupt, and recorded 7th April, 1867,

*Held*, The mortgage lien has priority over the judgment.—*In re W. F. Lacy*, vol. 4, p. 62.

10. Wages.

Upon proof of claim made by the father of a minor son, for the labor of such son,

as an operative in the employment of the bankrupt within the six months next preceding the first publication of the notice of proceedings in bankruptcy,

*Held*, That the father is entitled to be preferred, to an amount not exceeding fifty dollars, according to Section 28.—*In re Harthorn*, vol. 4, p. 103.

#### 11. Warrant to Confess Judgment.

Where a creditor has reasonable cause to believe his debtor insolvent, he acquires no preference in bankruptcy over other creditors of the debtor, by taking from his debtor a promissory note with warrant of attorney to confess judgment, and levying an execution issued on said judgment note, on the debtor's stock of goods.—*Terry & Cleaver*, vol. 4, p. 126.

#### 12. Creditors of Separate Partnerships.

The creditors of several partnerships are entitled to preference of payment out of the assets of the firm to which they respectively gave credit.—*Warren Leland and Chas. Leland*, vol. 5, p. 222.

#### 13. Services Beneficial to all the Creditors.

When the bankrupts made an agreement with a party to pay him for certain services, the benefits of which services would accrue to the other creditors, such claim is entitled to preference.—*Nounnan & Co.*, vol. 6, p. 579.

#### 14. Grounds upon which Preference must Rest.

Preference in a Bankrupt Court must rest either on a lawfully-acquired lien, created before the filing of a petition, by or against the bankrupts, or else the consideration therefor must have been unequivocally in aid of the assignee after adjudication, or in aid of the proceeding in bankruptcy.—*Nounnan & Co.*, vol. 7, p. 15.

#### 15. Idem. United States Laws.

Preferences created by the United States laws are alone protected by the 28th Section of the Bankrupt Act.—*Stuyvesant Bank*, vol. 9, p. 318.

#### 16. Landlord—Neglect to Secure Lien.

A landlord claimed a preference for rent of a plantation, leased by him to the bankrupt, upon which plantation it was alleged there was remaining, at the time of the adjudication of bankruptcy, property more than sufficient to pay the rent due, which property was sold by the assignee.

*Held*, That the petitioner having failed to take the necessary steps to secure his lien on the property for the rent due had no prior claim in the fund in the hands of the assignee, and that he must share *pro rata* with the general creditors.—*Austin v. O'Reilly, Assignee*, vol. 8, p. 129.

#### 17. Idem. Operatives.

The 28th Section of the Bankrupt Act does not give to the five classes of creditors, therein enumerated, any priority over secured creditors. By the laws of New Jersey, landlords and operatives, in cases of this nature are entitled to the payment of their preferred claims, *pro rata*.—*In re William McConnell*, vol. 9, p. 387.

#### 18. Distress Warrant.

The right of an execution-creditor or a landlord, upon a warrant of distress, is paramount to that of the assignee in bankruptcy, where the execution or warrant of distress was issued before the commencement of proceedings in bankruptcy.—*Wilson v. Childs*, vol. 8, p. 527.

#### 19. Savings Banks.

This was a State bank created by the laws of the State of New York. The statute of that State provided "that upon its becoming insolvent, after paying its circulation, the assets should be first applied to paying deposits made with it by savings banks."

*Held*, This is a mere *rule of distribution* in insolvency and creates no lien; that preferences created by United States laws are alone protected by the 28th Section of the Bankrupt Act. The preference in the distribution of an insolvent bank's estate granted by the State law to savings banks is not protected by the Bankrupt Act, but repealed thereby when the estate is distributed in bankruptcy.—*In re Stuyvesant Bank*, vol. 9, p. 318; vol. 10, p. 399.

#### 20. Stockholder's Seat at Board.

Where, by the articles of association of a stockbrokers' board, a seat in it, in the event of the insolvency of the member, is required to be disposed of, and the proceeds applied first exclusively to the payment of debts due other members,

In such case, upon the bankruptcy of the broker, his assignee in bankruptcy will only be entitled to the surplus arising from the sale after the other members of the

board are paid in full their claims.—*Hyde, Assignee, v. Woods et al.*, vol. 10, p. 54.

## PRIVILEGE OF COUNSEL.

See AFTER-ACQUIRED  
PROPERTY,  
ATTORNEY AND  
COUNSEL,  
BANKRUPT,  
EXAMINATION,  
TESTIMONY,  
WITNESS.

### 1. Does not Extend to Business Dealings with Client.

A witness who was a lawyer, being under examination, was questioned touching a certain conveyance made to him by the bankrupt and wife, and a subsequent conveyance by him to the wife, and refused to testify thereon, as matter within the privilege of confidential communications between attorney and client.

*Held*, On the facts stated the questions were proper and must be answered, and are not within such privilege.—*In re Garrett S. Bellis & James Milligan*, vol. 3, p. 199.

### 2. To what it Extends.

Counsel of a bankrupt cannot be compelled to disclose any information in regard to the affairs of the bankrupt which were imparted to him as counsel by the bankrupt.

Nor can he be compelled to disclose information received on behalf of the bankrupt as to the bankrupt's affairs, from persons to whom he was referred by the bankrupt.

The privilege of counsel does not extend to the concealment of the subject discussed, but only to the discussion. Counsel was required to answer as to what affairs of the bankrupt were discussed in a particular conversation, though excused from the statement of the conversation.

Privilege of counsel will not justify counsel in refusing to answer with whom he had conversation in relation to affairs of bankrupt, though it will excuse him from stating the conversation had.

Privilege of counsel cannot be set up as an excuse for not answering whether "a particular paper ever came under witness's observation," or whether "witness drew or directed to be drawn, a certain deed from

the bankrupt," or whether "at a certain date witness received certain cheques drawn to the order of the bankrupt," or "what disposition was made of such cheques."

Acts and things which have come to witness's knowledge by reason of his position as counsel, may be inquired about, and the witness required to state all the information he has in regard to them which was not communicated to him by the bankrupt or by some one through the bankrupt's direction.—*In re James S. Aspinwall*, vol. 10, p. 448.

### 3. Counsel may not Refuse to be Sworn.

Where a legal adviser refuses to be sworn as a witness,

*Held*, The right to refuse to answer a question on the ground of privilege, does not warrant a refusal to be sworn as a witness.—*In re George Woodward & Julius C. Woodward*, vol. 3, p. 719.

## PROCEEDINGS IN BANKRUPTCY.

See ADJOURNMENT,  
APPEARANCE,  
ASSIGNEE, ELEC-  
TION OF,  
COMMENCEMENT OF  
PROCEEDINGS,  
DISCHARGE,  
DISTRIBUTION,  
IRREGULARITY OF  
PROCEEDINGS,  
MEETINGS,  
ORDER TO SHOW  
CAUSE,  
PETITION,  
RECORDING,  
RETURN DAY,  
SERVICE OF PA-  
PERS,  
SUMMARY JURIS-  
DICTION,  
SUPPLEMENTARY  
PROCEEDINGS,  
TERMINATION OF  
PROCEEDINGS,  
VALIDITY OF PRO-  
CEEDINGS.

### 1. Adjournment Sine Die terminates Proceedings.

An adjournment without day of the proceedings under a petition for discharge ter-



minates the proceedings, so far as any action under the order to show cause is concerned.—*Seckendorf*, vol. 1, p. 626.

## 2. Nature of.

Proceedings in bankruptcy are in the nature of equity proceedings.—*In re Wallace*, vol. 2, p. 134.

## 3. Idem.

A proceeding in bankruptcy, from the filing of the petition to the distribution of the bankrupt's estate and his discharge, is a single statutory proceeding.—*York & Hoover*, vol. 4, p. 429; *Ala. & Chat. R. R. Co. v. Jones*, vol. 5, p. 98.

## 4. Idem.

A proceeding to have a debtor adjudged bankrupt is a civil and not a criminal proceeding.—*In re De Forest*, vol. 9, p. 278.

## 5. Validity of Debt not to be Disputed while Adjudication remains Unrevoked.

While an adjudication in bankruptcy stands unrevoked, all inquiry into the validity of the debt of the petitioning creditor in the involuntary proceedings is precluded.—*In re James W. Fallon*, vol. 2, p. 277.

## 6. Voluntary Pending Involuntary Proceedings Invalid.

Creditors petitioned to have debtor declared bankrupt; process issued thereupon, and bankrupt, by indorsement on copy of said petition served upon him, admitted the truth of the allegations therein contained, except as to those of fraud, and before the day to appear and show cause the bankrupt filed his voluntary petition in the same court and was adjudicated bankrupt by the proper Register.

On motion to set aside the said adjudication of bankruptcy as void,

*Held*, That the same was nugatory and of no effect pending the proceedings in involuntary bankruptcy. Adjudication accordingly set aside and debtor adjudged bankrupt by the court on petition of creditors, and schedules previously filed by him ordered to be held as filed under such adjudication.—*Stewart*, vol. 3, p. 108.

## 7. Removal of Mortgaged Property after Commencement of Proceedings.

Where the mortgagee removed the prop-

erty mortgaged from the possession of the bankrupt after proceedings commenced in bankruptcy,

*Held*, The mortgagee must surrender the property in specie to the assignee in bankruptcy, to be sold by him to the best advantage of all interested; if not possible so to surrender it, the mortgagee must account to the assignee for the value of the mortgaged property at the time when taken, the proceeds to be applied to the payment of the mortgage, and the surplus, if any, be disposed of as assets.—*Rosenberg*, vol. 3, p. 130.

## 8. May be Joint.

So long as joint debts of a firm remain outstanding and unsettled, proceedings in bankruptcy, whether voluntary or involuntary, may be joint.—*Williams*, vol. 3, p. 286.

## 9. Settlement of Estate by Trustees.

Although the winding up and settlement of the estate are to be deemed proceedings in bankruptcy under the 43d Section of the Bankrupt Act, which contemplates the superseding of proceedings under the Act, and, in given contingencies, the "resumption" of such proceedings; yet it is evident that the true meaning is the substitution of the modes prescribed in this Section for the ordinary modes. Such proceedings are none the less "proceedings in bankruptcy" under the Act because they are special in their nature. Either *mode* can be adopted—the ordinary one or this special one. The trustees, under direction of the committee, can wind up the estate just as the bankrupt could have done, *or* they may be restricted to the more limited powers and duties of ordinary assignees.—*In re Darby*, vol. 4, p. 309.

## 10. Supervision of Circuit Court.

When it occurs, pending this proceeding, that the assignee or creditor is driven to file a bill in equity or bring an action at law, the Circuit Court has no supervisory jurisdiction of the proceedings had therein; nor has it when the claim of a supposed creditor has been rejected in whole or in part, nor where the assignee is dissatisfied with the allowance of a claim. These classes of cases may be taken up on writ of error or appeal. Other questions, however, arising in the District Court in the



progress of a case in bankruptcy, whether of legal or equitable cognizance, fall within the supervisory jurisdiction of the court, and may, upon bill, petition, or other proper process of any party aggrieved, be heard and determined in the Circuit Court as a court of equity.—*In re York & Hoover*, vol. 4, p. 479.

**11. New Proceedings after Refusal of Discharge.**

The debtor, on voluntary petition, was adjudged a bankrupt on the 17th of February, 1868, but neglected to make application for final discharge, until the 8d of May, 1869. It appearing to the court that no assets had come to the hands of the assignee, and that the application for discharge was not made within one year from the date of adjudication, his discharge was refused. The debtor afterwards filed a new petition in bankruptcy, and was adjudged a bankrupt, and on motion of the creditors to vacate the adjudication and strike the petition from the file,

*Held*, That the refusal of the court to grant a discharge upon that ground was no bar to the new proceedings.—*In re J. W. Farrell*, vol. 5, p. 125.

**12. Assignee cannot Recover a Forfeiture claimed by Bankrupt.**

The Bankrupt Act does not grant to the assignee of a bankrupt any right or power to institute proceedings for the recovery of a statute forfeited and claimed by the bankrupt either prior or subsequent to proceedings against him in bankruptcy. *Brombey v. Smith et al.*, vol. 5, p. 152.

**13. In Different Districts.**

While proceedings are pending in one district, it is improper to grant an adjudication in another, as the petition first filed takes the precedence.—*Warren Leland & Chas. Leland*, vol. 5, p. 222.

**14. Staying Proceedings by Purchasing the Claims.**

There is nothing illegal in endeavoring to purchase all the claims against the estate of a bankrupt for the purpose of staying the bankruptcy proceedings altogether.—*In re Pease et al.*, vol. 6, p. 173.

**15. Death before Adjudication.**

Where a debtor dies between the time of the serving of the rule to show cause and his adjudication as a bankrupt, the

proceedings will be abated.—*Frazier & Fry v. McDonald*, vol. 8, p. 287.

**16. Sheriff cannot Proceed against Property after Commencement of Proceedings.**

A sheriff or other ministerial officer, who, after proceedings have been commenced in bankruptcy against a debtor, levies on and sells property which was the bankrupt's, is liable to any assignee who may be there—after appointed in bankruptcy proceedings, notwithstanding he may have paid over the proceeds to the execution creditor, prior to receiving notice of the proceedings in bankruptcy having been commenced.

The same rule applies where he seizes the property on *mesne* attachment within four months prior to the commencement of proceedings in bankruptcy, and sells the same immediately as perishable property, but does not pay over the money arising therefrom until after proceedings have been commenced. His position is the same as if he had applied the property of A (the assignee) to the payment of the debts of B (the bankrupt).—*Miller v. O'Brien*, vol. 9, p. 26.

PROCEEDINGS IN REM.

**1. Enforcement of Maritime Contract.**

The Act of April 24th, 1862, of New York (Laws of 1862, chap. 482), is unconstitutional and void, so far as it provides for enforcing a maritime contract by proceedings *in rem* against a vessel.—*Ship Edith*, vol. 6, p. 449.

**2. After Discharge.**

A creditor may take a decree *in rem* against property on which he has a lien, notwithstanding his debtor has been discharged as a bankrupt.—*Stoddard v. Locke et al.*, vol. 9, p. 71.

PROCEEDINGS IN STATE COURTS.

See CONTEMPT,  
CORPORATIONS,  
COURTS,  
INSOLVENT LAWS,  
JURISDICTION,  
RECEIVERS,  
RESTRAINING  
SUITS.

**After Filing of Petition.**

From and after filing of petition in bankruptcy a creditor in a State court acquires

no rights, which a decree in bankruptcy would not annul. — *Smith v. Buchanan*, vol. 4, p. 397.

## PROCESS.

See COSTS AND FEES,  
LEGAL PROCESS.

### PROCURING AND SUFFERING TO BE TAKEN.

#### 1. Fictitious Judgment Obtained Prior to Passage of the Act.

Where judgment shown to be fictitious, was obtained against debtor prior to the passage of the Bankruptcy Act, on which judgment execution was issued and property of the debtor was levied upon after the passage of the Act,

*Held*, That the debtor had procured or suffered his property to be taken by legal process, and had transferred his property with intent to delay, hinder, and defraud his creditors, and had thereby committed acts of bankruptcy. — *Julius Schick*, vol. 1, p. 177.

#### 2. Partnership Property

Where a firm is insolvent, it is an act of bankruptcy for a member thereof to suffer its property to be taken on legal process, with intent to give a preference to a creditor of the firm. — *Black & Secor*, vol. 1, p. 353.

#### 3. Confession of Judgment.

An insolvent debtor commits an act of bankruptcy by confessing judgment, and allowing his property to be taken on an execution issued thereupon, with intent to give a preference to a creditor. — *Asa W. Craft*, vol. 1, p. 378.

#### 4. Inability to Resist.

Suffering a sale to take place from mere inability to resist is not an act of bankruptcy, even though one creditor should thereby be preferred to another. — *Ranken & Pullen v. Florida R. R. Co.*, vol. 1, p. 647.

#### 5. Omission to Apply for Adjudication does not Supply "Intent."

The property of a debtor being attached by a hostile creditor, without his knowledge, and he omitted to have himself adjudged a voluntary bankrupt,

*Held*, That the omission had no retro-

spective effect on the previous taking of the property, and could not "supply the intent to give a preference." — *In re Belden*, vol. 2, p. 42.

#### 6. Execution and Levy before Commencement of Proceedings.

Where a judgment is regularly recovered under the laws of a State, and execution and levy has duly followed the entering of a judgment, *even though* prior to the commencement of bankruptcy proceedings, the same are void if the debtor suffered (not procured) the recovery of the judgment, and the subsequent execution and levy, and the creditor had reasonable cause to believe the debtor insolvent. — *Beattie, Assignee of Morse, v. Gardiner*, vol. 4, p. 323.

#### 7. Honest Inaction.

Mere honest inaction in a poor man, when a creditor seeks to make by law a just debt, is not in itself an act of bankruptcy. Adjudication of bankruptcy will be reversed when the only act of bankruptcy charged was "that the bankrupt suffered his property to be taken on legal process with intent to give a preference." — *Wright v. Filley*, vol. 4, p. 611.

#### 8. Intent may be Shown by Circumstances.

Creditors who receive an illegal preference are liable to the assignee of the bankrupt; and the intent of the debtor to give, and of the creditor to secure an unauthorized preference, may be shown by circumstances.

Facts establishing an illegal preference stated. — *Giddings, Assignee, v. Dodd, Brown & Co.*, vol. 4, p. 657.

#### 9. When an Act of Bankruptcy.

Where the debtor, when insolvent, suffered his property to be taken on legal process, on behalf of creditors with the intent to give them preference, and they had at the time reasonable cause to believe that he was insolvent and that the transaction was in fraud of the provisions of the Bankrupt Act, and the transaction took place within four months before the filing of the petition in bankruptcy, it was a fraud on the act for the debtor to give, or for the creditor to accept of, the preference with the intent to prefer. — *Kohlsaat v. Hoguet et al.*, vol. 5, p. 159.

**10. Inferred from Concert of Action.**

Procurement to take in execution may be inferred from such relationship between the debtor and creditor and apparent concert of action on their part as would ordinarily be incompatible with any other intention on the part of the debtor, than that of giving preference to the creditor.—*Dunkle & Dreisbach*, vol. 7, p. 72.

**11. Not in itself an Act of Bankruptcy.**

The procuring or suffering a judgment to be obtained against him by a debtor, without giving any warrant of attorney, is not in itself an act of bankruptcy; yet, if he directly or indirectly assists or facilitates the obtaining of judgment on which an execution has followed, this may be evidence in support of an allegation that he has committed an act of bankruptcy by procuring or suffering his property to be taken in execution.—*In re Wood*, vol. 7, p. 126.

**12. Judgment by Default.**

A debtor suffers his property to be taken on legal process when he allows it to be seized in execution on a judgment obtained against him by default.—*In re Forsyth & Murtha*, vol. 7, p. 174.

**13. An Act of Bankruptcy if a Preference is Suffered.**

Although a debtor, previous to committing an act of bankruptcy, may be sued, and on recovery of judgment an execution, levy, and sale may follow, and although mere insolvency is not sufficient grounds on which to make a decree of involuntary bankruptcy, yet, if the debtor suffers a preference of creditors by means of such judgment or otherwise, that of itself will be an act of bankruptcy. And such advantage, obtained by creditors having reasonable cause to believe their debtor insolvent, must yield to the right of the assignee, provided other creditors file their petition within six months.—*Smith, Assignee, etc., v. Buchanan et al.*, vol. 4, p. 397; vol. 7, p. 513.

**14. Reason to Believe Debtor Insolvent.**

An insolvent debtor, within four months before the filing of a petition in bankruptcy, suffered his property to be seized and sold on execution by a creditor who

had reasonable cause to believe the debtor insolvent at that time.

*Held*, That the assignee in bankruptcy was entitled to a judgment against the creditor for the value of the property seized on the execution.—*Christman v. Haynes*, vol. 8, p. 528.

**15. Creditor Levying upon Property may have Debtor Adjudicated Bankrupt for Allowing the Act.**

A creditor, knowing his debtor to be insolvent, may prosecute his debt to judgment, issue execution, and levy on the property of his debtor, and afterwards have the debtor adjudicated bankrupt for allowing his property to be taken on the execution.—*Coxe v. Hale*, vol. 8, p. 562.

**16. Intent to Prefer not Inferable from mere Non-Resistance.**

Under a sound construction of Sections 85 and 89 of the Bankrupt law, something more than passive non-resistance in an insolvent debtor is necessary to invalidate a judgment and levy on his property when he has no defense to the debt. In such a case there is no legal obligation upon the debtor to file a petition in bankruptcy to prevent judgment and levy, and a failure to do so is not sufficient evidence of intent to give a preference to the judgment creditor. The judgment and levy in such a case are not void though the creditor knew the debtor's insolvent condition. Very slight circumstances, however, which tend to show the existence of a desire to give a preference or to defeat the operation of the Act, may, by giving color to the whole transaction, render the lien void.—*Wilson v. City Bank of St. Paul*, vol. 9, p. 97.

**17. Non-Resistance when utterly Insolvent, supplies Intent to Prefer.**

*Wilson v. City Bank of St. Paul*, examined, and held not to cover a case where a debtor who is utterly insolvent, and with no reasonable prospect of being able to pay his debts, fails to apply for the benefit of the Bankrupt Act, but passively permits certain creditors to appropriate all his assets to their debts.

Such a case is not that "honest struggle to meet their debts and to avoid the breaking up of their business," referred to by the Supreme Court.—*Hyde v. Corrigan*, vol. 9, p. 466.

**18. Judgment upon Failure to Answer.**

Where a judgment is obtained for want of an answer, against an insolvent debtor, and such judgment is docketed in the lien docket, so as to become a lien upon the real property of such debtor,

*Held*, Such lien being created with the implied consent of the debtor, is, in effect, a transfer by him to the creditor, and void under the first clause of Section 35 of the Bankrupt Act.—*Catlin v. Hoffman*, vol. 9, p. 342.

**19. Burden of Proof.**

The burden of proof is on the creditor to show that the creditor *procured* or *suffered* his property to be taken on legal process, with intent thereby to give a preference.—*In re King*, vol. 10, p. 103.

**20. Amendment of 1874.**

Since the amendment of June 22d, 1874, it is not an act of bankruptcy for one, insolvent, to “*suffer* his property to be taken,” etc., he must “*procure*,” etc.—*In re Isaac Scull*, vol. 10, p. 166.

## PRODUCTION OF BOOKS AND PAPERS.

**Return Day of Rule.**

The District Court will order the production of books and papers at the summary hearing on the return day of the order to show cause.

The 15th Section of the Judiciary Act of 1789 is applicable to such cases; if not, the general scope of the Bankrupt law gives plenary power.—*In re Mendenhall*, vol. 9, p. 285.

**PROMISSORY NOTES.**

See COMMERCIAL PAPER.

**PROOF OF DEBT.**

See AMENDMENT,  
APPEAL,  
CLAIM,  
COMMISSIONER,  
CORPORATION,  
CREDITORS,  
DEBT,  
EXPUNGING PROOF,  
FRAUD,  
INTEREST,  
OATH,  
PARTNERS,

PREFERENCE,  
PROVABLE DEBT,  
REGISTER,  
RENT,  
SECURED DEBTS,  
SECURITY,  
SURETY,  
VACATING PROOF  
OF DEBT,  
VARIANCE.

**PROOF OF DEBT—**

- I. *Agent*, p. 572.
- II. *Amendment*, p. 572.
- III. *Before whom Made*, p. 573.
- IV. *Commercial Paper*, p. 574.
- V. *Consideration*, p. 574.
- VI. *Contesting Proof*, p. 574.
- VII. *Disposition of Proofs*, p. 574.
- VIII. *Effect of Proof*, p. 575.
- IX. *Formal Proof*, p. 575.
- X. *Judgment Creditor*, p. 575.
- XI. *Jurisdiction Over*, p. 575.
- XII. *Lien*, p. 576.
- XIII. *Medium of Payment*, p. 576.
- XIV. *Postponement*, p. 576.
- XV. *Upon Policy of Insurance* p. 577.
- XVI. *Register*, p. 577.
- XVII. *Securities*, p. 577.
- XVIII. *Transfer of Claim*, p. 577.
- XIX. *Withdrawing Proof*, p. 578.

**1. By Agent.****1. Claimant Absent, U. S.**

The absence of a claimant, which will render a proof of debt by an agent admissible, must be “from the United States;” nor will the oath of an agent, that he is better acquainted with the facts than his principal, render the deposition of the agent alone admissible as proof of debts.—*Whyte*, vol. 9, p. 267.

**II. Amendment.****2. Creditor may Require an.**

A creditor, after his claim has been duly proved, has the right to ask that the petitioner amend any defect in his petition or schedule.—*Jones*, vol. 2, p. 59.

**3. Clerical Errors.**

A creditor may correct clerical errors in his proof of claim at any time before final dividend.—*Ben. H. Myrick*, vol. 3, p. 156.

**4. Court may Allow.**

The court has, at all times, full power and control over proofs of claims, and may allow amendments and supplemental proofs to be filed.—*Montgomery*, vol. 3, p. 424.

**5. Of Mistake in Proof.**

Where a creditor proved claims on two old promissory notes, and then applied to amend proof so as to show that a new note had been given in a settlement, in which said two notes were part consideration, and they had been proved by mistake.

*Held*, Application to amend must be denied. The creditor may prove a new claim on the new note, and an examination may be had on application of the assignee into the validity of the claims.—*Montgomery*, vol. 3, p. 430.

**6. Indefinite Statement of Consideration.**

The Register may permit or require a statement of the consideration of the debt. too general and indefinite to be amended.—*Estate of Elder*, vol. 3, p. 670.

**7. Separate Proofs for Same Debt.**

Where a party files separate proofs of debt for the same amount against the individual members of the firm, the claims must stand as proven, and the motion of the assignee that they be stricken from the list, will be overruled.—*In re Beers et al.*, vol. 5, p. 211.

**8. Mistake or Ignorance.**

A party, holding security, proved as an unsecured creditor, after receiving a dividend, moved to amend his proof, because of his ignorance of the law at the time of first proving his claim.

*Held*, The Bankrupt Court possesses discretionary power as to allowing proofs of debt to be amended.

This power will generally be exercised in cases of mistake or ignorance either of fact or law, in the absence of fraud, when all parties can be placed in the same position they would have been if the error had not occurred.

Where the error is tainted with fraud, however slight, and all parties cannot be placed in the same position as if the error had not occurred, the court will allow the burden to fall upon him who committed the error rather than upon the innocent.—*In re John F. Parkes and Charles R. Parkes*, vol. 10, p. 82.

**III. Before whom Made.****9. Resident U. S. Commissioner.**

A debt against a bankrupt's estate may be proven before a United States commissioner, although the bankrupt and creditor both reside in the same judicial district.—*In re Luther Sheppard*, vol. 1, p. 439.

**10. Contra.**

Debts due by the bankrupt to resident creditors must be proved before one of the Registers of the court of the Home district. Debts due to non resident creditors must be proved before any register or commissioner of the court in any district other than that in which proceedings in bankruptcy are pending. Commissioners of the Circuit court of the United States are not authorized to take proofs of debts due to creditors residing in district where proceedings are pending.—*In re Healy*, vol. 2, p. 36.

**11. Idem.**

A creditor residing in the judicial district where proceedings in bankruptcy are pending, must prove his claim before the Register of that district. Residing in another judicial district, his deposition must be taken before a Register of that district. Residing in a foreign state, his deposition must be taken before a minister, consul, or vice-consul of the United States.—*In re Strauss*, vol. 2, p. 48.

**12. Notaries.**

Notaries have not the judicial power requisite to take legal proof of a claim. They are state officers and responsible alone to them, and a creditor residing in another judicial district cannot make proof of his claim before them.\*—*Ibid*.

**13. Proceeding in Arrangement.**

Proof of debts against the estate of a bankrupt must be made before the Register, even though proceedings in bankrupt-

\* By the Act of June, 1874, notaries may now take proof of debt.



cy have been superseded by arrangement under Section 43 of the Bankrupt Act—*In re Bakewell*, vol. 4, p. 619.

#### 14. Register or Commissioner.

As the law now stands, proof of debts in bankruptcy may be taken by a Register or by a commissioner in all cases, whether of a resident or non-resident creditor, or whether such commissioner holds his office in the same town with the Register or not. The only limitation being that it shall be taken before a Register or Commissioner of the same judicial district in which the creditor resides or in which the proceedings are pending.—*Merrick*, vol. 7, p. 459.

#### IV. Commercial Paper.

#### 15. Production of Note.

Where creditors sought to prove debts for which they held promissory notes of bankrupt, and judgment on one of the notes had been obtained,

*Held*, That the notes should be produced if required by the Register. If debt was proved on the judgment and not on the note, the note need not be produced.—*In re William H. Knoepfel*, vol. 1, p. 70.

#### 16. Indorsee.

Commercial Paper, acquired in good faith before maturity, may be proved in bankruptcy by the indorsee upon showing a valid consideration paid by him; and such showing, in such a case, will be held to be a compliance with Section 22 of the Bankrupt Act, which requires the proof of debt to set forth the *consideration* of the demand.—*In re The Lake Superior Ship-canal Railroad and Iron Company*, vol. 10, p. 76.

#### V. Consideration.

#### 17. Insufficiency of Statement.

If the statement of the consideration is so general and indefinite as to afford no aid to the creditors in their inquiry as to the fairness and legality of the claim, it does not affect the object of the law, and must be held insufficient. The kind of goods, the quantity, the price, and the time of sale and delivery should be stated. The Register may permit or require amendment.—*Estate of Elder*, vol. 3, p. 670.

#### VI. Contesting Proof.

#### 18. Judgment Debt.

When a judgment debt is offered for

proof against the estate in bankruptcy of the debtor, whose petition was filed after the date of the judgment, it may be objected to by other creditors on the ground of fraud or irregularity, including fraudulent preference; for they are not parties nor privies to the judgment, and may impeach it collaterally.—*Fowler*, vol. 1, p. 677.

#### 19. Certifying Objections.

When written objections to a proof of debt are filed with the Register and testimony is taken thereon, it is his duty, if requested by either party, to certify the same to the district judge for decision, even though no proof whatever be offered tending to invalidate the debt so proved.—*In re Clark & Bininger*, vol. 6, p. 202.

#### 20. Moving to Expunge—Register Cannot Expunge.

Where a creditor who has security upon the bankrupt's property, has made due proof of his debt, and his proof of claim is contested, the better, if not the only proper mode, of submitting the question in controversy, is to move the court to expunge the proofs made by the secured creditor, or to apply for a re-examination of the claim, under General Order No. 30.

The Register has no power to expunge such proofs or to reject the claims.—*In re Jaycox & Green*, vol. 7, p. 303.

#### 21. Assignee must Move to Expunge Invalid Claim.

Where an assignee in bankruptcy is not satisfied with the legality or correctness of any claim filed with him, the proper practice is for him to move to have it expunged under the 34th rule of the General Orders in bankruptcy, and proceed as in that rule directed.—*In re Firemen's Insurance Company*, vol. 8, p. 123.

#### 22. Neglect of Assignee to Contest.

If an assignee in bankruptcy, with knowledge, or with reason to believe, that one claiming to be a creditor of the bankrupt had proved a debt against the bankrupt's estate which had no existence or was tainted with fraud, should refuse or neglect to contest it, there is no reason why the other creditors who have proved their debts should not be allowed the aid of a court of equity to annul the fraudulent



proof of debt.—*First Nat. Bk. of Troy v. Cooper et al.*, vol. 9, p. 529.

### 23. Remedy upon Rejection of Proof.

Where the District Court, on objection of the assignee, rejects a proof of debts,

*Ordered*, The creditor should establish his claim by suit against the assignee.—*Adams v. Myers, Assignee*, vol. 8, p. 214.

## VII. Disposition of Proofs.

### 24. Creditor must not retain Possession of Deposition.

A creditor who, after making his deposition to prove his debt, retains possession of the deposition, and does not allow it to pass into the hands of the assignee in bankruptcy, is not a creditor who has proven his debt.—*Sheppard*, vol. 1, p. 439.

### 25. To be sent to Assignee, etc.

All proofs of debt are to be sent to the assignee for him to report them as required by Section 22 of the Bankrupt Act.—*Anonymous*, vol. 1, p. 219.

When the assignee has made his register, he must return the proofs of debt to the Register, and they must, under General Order 27, be filed in the clerk's office with the other papers in the case.—*Ib.*

### 26. Withdrawal

Where a proof of debt can be withdrawn without injuriously affecting the right of intervening creditors, and all parties can be restored to like position as previous to the filing of the proof, the court, but not the Register, may permit such withdrawal.—*Hubbard*, vol. 1, p. 679.

## VIII. Effect of Proof.

### 27. Upon Right to Proceed upon Claims.

A creditor proving his debt against a bankrupt, cannot afterwards maintain a suit, for the claims and unsatisfied judgments already obtained are discharged and surrendered in by the proving of the debt. A creditor may moreover sue any one else liable on the same debt, and proceedings pending against others thereon; and unsatisfied judgments already obtained, are not affected, discharged, or surrendered by the proving of the debt.—*In re Samuel W. Levy & Mark Levy*, vol. 1, p. 327.

### 28. Creditor Waives Rights of Action.

Creditors waive all right of action against the bankrupt, on either their judgments or

the original indebtedness, by proving their debts in bankruptcy, and all proceedings in such suits must be stayed under Section 21 of the Bankrupt Act.—*In re Louis Meyers*, vol. 1, p. 581.

### 29. Equivalent to Commencing Suit.

Where a company becomes bankrupt, filing proof of debt with the assignee is to be taken and held as equivalent to commencing suit.—*Fireman's Ins. Co.*, vol. 8, p. 123.

## IX. Formal Proof.

### 30. Sufficient.

Formal proof of a debt is *prima facie* sufficient.—*Colman*, 2,—562.

### 31. When Dispensed with.

Under Section 43, the court may authorize the trustees to carry on the business of the bankrupt as if there had been no failure; and may allow formal proof of debt to be dispensed with, where the correctness is admitted.—*In re Darby*, vol. 4, p. 211.

### 32. May be Required.

An assignee, through the court, may require the creditor to prove his debt in the usual form, reciting the security and setting forth the consideration.—*Brombey, Assignee, v. Smith et al.*, vol. 5, p. 152.

## X. Judgment Creditor.

### 33. After Adjudication.

It is not necessary for creditors who have recovered judgments after the adjudication of their debtor, to vacate their judgments before they can prove the claims on which such judgments were recovered, provided the claims were otherwise valid and properly provable.—*In re Stevens*, vol. 4, p. 367.

## XI. Jurisdiction over.

### 34. First Meeting.

The court has full control of the debts and proofs, and the bankrupt has his right to object, to the validity thereof, at the first meeting of creditors.—*In re Charles G. Patterson*, vol. 1, p. 101.

### 35. Court cannot Refuse Proof Correct in Form.—Power of Revision.

The court has no discretion to refuse to receive and file proof of debt which appears on its face to have been taken by a proper officer and to be correct in form and in substance

The receipt and filing of proof of debt alone confers jurisdiction over the claim on the court, and then only does its revising power over such proof, mentioned in the Act of 1868, commence. The receiving and filing of a proof of debt concludes nothing, and the power still remains in the court to revise and correct, or reject such proof altogether.—*In re Merrick*, vol. 7, p. 459.

## XII. Lien.

### 36. Particular Character.

A creditor who has a lien either specific or general, must disclose its particular character, that it may legally, and according to its priority, be ascertained and liquidated.—*In re Sampson D. Bridgman*, vol. 1, p. 312.

## XII. Medium of Payment.

### 37. Entry by Assignee.

Where a note is payable *in coin* the demand should be entered upon the books of the assignee as payable in the stipulated currency—*Estate of Elder*, vol. 3, p. 670.

## XIV. Postponement.

### 38. Till Appointment of Assignee.

Such claims as are of a questionable or doubtful character may be postponed until after an assignee is appointed.—*In re Jones*, vol. 2, p. 59.

### 39. Idem.

The Register has power to postpone proof of a claim until an assignee is chosen, if a case is made out for such postponement within Rule 6 of this court; but he has no power to institute or set on foot the inquiry provided for by the last clause of Section 22 of the Act.—*In re Adolph B. Herrman and Herman Herrman*, vol. 3, p. 618.

### 40. Idem.

At the time of the delivery of a bond and mortgage, an act of bankruptcy was close at hand, the mortgagee being well apprised of the facts.

The trust was not general, for the benefit of all creditors, but conditional; the mortgagee having no power whatever over the *real* property for six months, and the *personal* property incumbered by a specific reservation.

The motion was to exclude the mortgagee, and other creditors who had expressed themselves satisfied with the transaction, from participation in the choice of assignee, and to postpone the proof of their claims.

The proof of the claim of Allan Sheldon & Co. should be postponed until after the choice of an assignee.—*In re Eli B. Chamberlain and Owen P. Chamberlain*, vol. 3, p. 710.

### 41. Idem.

Debts proved and filed with the Register may be postponed for investigation before the assignee, and not allowed to be voted upon for assignee.—*Frank*, vol. 5, p. 194.

### 42. Idem.

The Register may exercise the authority given by the Judge, by Section 23 of the Bankrupt Act, to postpone the proof of a debt offered at the first meeting, if he finds, upon the evidence, that its validity is doubtful.

The practice in this district, and in several others, for the Register to exercise this discretion, is sound, though he has no power either to admit or postpone a contested claim which he considers valid, but must report it to the court if the vote upon it could effect the choice of assignee.—*Bartusch*, vol. 9, p. 478.

### 43. Certifying Proceedings to the Court.

Creditors whose proof of claim has been postponed by the Register, may have the proceeding certified to the court.—*Lake Superior Sh. Can. R. R. & Iron Co.*, vol. 7, p. 376.

### 44. Effect of Postponement.

Where the claim of a creditor, at first meeting, is postponed by the Register, and again presented after the election of assignee,

*Held*, That the proof of claim must be treated in all respects as if it had not been before tendered.—*In re Adolph B. Hermann and Herman Hermann*, vol. 3, p. 649.

### 45. Idem.

The postponement effects no rights, except that to vote for assignee.—*Lake Superior Ship Canal R. R. & Iron Co.*, vol. 7, p. 376.

XV. *Upon Policy of Insurance.***44. Adjusted.**

Where the claim has been adjusted between the insured and the company, while solvent, it may be proved in bankruptcy as an ordinary debt, irrespective of the "year clause." But where not so adjusted previous to the insolvency of the company, the insured must not only furnish the "proof of loss," in the mode and manner pointed out in the policy, but must, in addition, file his proof of debt with the assignee in bankruptcy, within the time limited by the policy.—*Firemen's Ins. Co.*, vol. 8, p. 123.

XVI. *Register.***45. To Furnish List of Proofs to Clerk.**

The Register, on directing the order, Form 51, to issue, shall forthwith transmit to the clerk a list of all proofs of debt furnished to the Register or assignee, containing names, residences, and post-office addresses of creditors, with sufficient particularity to insure proper service of notice.—*Bellamy*, vol. 1, p. 118.

**46. Not Bound to Receive Proofs Taken before another Register Adjourning Issues into Court.**

Where depositions for proof of debt had been transmitted from one to another Register,

*Held*, A Register is not bound to receive and file a deposition for proof of debt taken and certified before another Register. If an issue of law or of fact is raised or contested, he must adjourn the question into court for the decision of the judge.—*In re Benjamin H. Loder*, vol. 8, p. 655.

XVII. *Securities.***47. Valuation of.**

A creditor having security, may prove his claim, to an amount exceeding the value of such security, without abandoning the same. He is, however, bound to set forth the value of his security, in order to vote as a creditor, in respect to the overplus proven by him, upon the choice of assignee.—*In re Henry C. Bolton*, vol. 1, p. 370.

**48. Idem.**

Creditors can exhibit and substantiate their claims against bankrupts, as as to comply with the requirements of the 22d Sec-

tion of the Bankrupt Act, without previously ascertaining the value of securities which they may hold.—*Bigelow & Kellogg*, vol. 1, p. 632.

**49. Revaluation.**

Where the value of a security held by a creditor has been once agreed upon between the assignee and the creditor, and after such agreement new facts are developed, showing the valuation to be erroneous, prior to the final dividend the assignee may require the security to be revalued.

In this case the present value of a policy of life insurance held by a creditor was assessed according to insurance tables, as to probable duration of life, but before final dividend the bankrupt died, and on application of assignee the value of the security was reassessed on the basis of the value of the policy at the time of the first assessment, in view of the certainty of the death of the debtor at the time he died.—*In re Newland*, vol. 9, p. 62.

**50. Must be set out in Order to their Appropriation.**

A creditor holding security for his debt does not in any manner prejudice his claim to the security he holds, by proving his debts as a debt with security, and setting out, in his proof of debt, the particulars of the security and its estimated value.

Such proof is a pre-requisite to any action for the appropriation of the security, in satisfaction, in whole or in part, of the debt, under Section 20 of the Act.—*Grinnell & Co.*, vol. 9, p. 29.

XVIII. *Transfer of Claim.***51. After Filing of Petition.**

Where a creditor after the filing of the bankrupt's petition, but before the first meeting of the creditors, transfers his debt to another, the debt may be proved by the owner of it at the time of proof, the oath being modified to suit the facts of the case.—*Murdock*, vol. 8, p. 146.

**52. Before Bankruptcy.**

A deposition by an assignee for value of a *chose in action*, before bankruptcy, is sufficient to entitle him to prove his debt and to be considered the creditor in respect to such debt; and such assignee of a *chose in action*, so proving, may have the right

to take any such action or proceedings in the cause in the name of his assignor at his own expense, as he may be advised.—*Fortune*, vol. 3, p. 312.

### XIX. *Withdrawing Proof.*

#### 53. **Not Allowed.**

An agent of a creditor filed and proved the claim, but not having power of attorney to vote for assignee, sought to withdraw proof of said claim, partly for the reason that he had not stated in his deposition that the creditor held promissory notes not yet due, and had agreed to discharge the claim on their payment.

Bankrupt objected.

*Held*, That neither proof of debt nor deposition could be withdrawn, but the creditor ought to be allowed and required to amend proof.—*In re James M. Loweree*, vol. 1, p. 74.

#### 54. **Not Allowable after Transmittal to Assignee.**

The Register cannot order or permit the withdrawal of a proof of debt after he has passed upon the same, allowed, certified, and transmitted it to the assignees.—*In re McIntosh*, vol. 2, p. 506.

#### 55. **Idem.**

Proof of debt cannot be withdrawn from the files by the creditor.

*Semble*, That it may be waived.—*In re Emison*, vol. 2, p. 595.

#### 56. **Permitted, when Injurious to no Interest.**

A creditor who has proved his debt in bankruptcy, may be permitted to withdraw his proof, if it was made under a mistake of fact or law.

Leave to withdraw will usually be granted where the withdrawal will restore all parties to the position they were in before the proof was made; but not if intervening rights will be affected.—*In re Edward Hubbard*, vol. 1, p. 679.

#### 57. **Failure to Mention Security.**

Where a creditor who has ample security for his claim makes proof of the same, without mentioning the security, through inadvertence and ignorance of the law, an order will be entered granting to the said creditor leave to withdraw his proof and restoring him to his rights as though no

proof had been filed.—*In re Clark & Binger*, vol. 5, p. 255.

#### 58. **Idem.**

A held a mortgage on the property of the bankrupts, to secure him as indorser of their paper, to a large amount. The holders of this paper proved their claims on their respective notes against the estate of the bankrupts as debts for which they held no security, they having no knowledge of the mortgage above mentioned to A when they received the notes bearing his indorsement.

*Held*, That the security was not personal to the surety (A), nor intended for his personal indemnity only, for the reason that the mortgage was conditioned for the payment of the indorsed notes as well as for the indemnity of the indorser; that it makes no difference whether the trust is created and defined by law, or written out by the parties; that the claimants in this case, before they proved their debts, had such a lien or security as prevented them from proving their claims for the whole amount as unsecured debts, without releasing their equitable interest in the mortgage before referred to. When, however, such proof was made through ignorance or mistake, a creditor ought to be allowed to withdraw his proof, and prove as a secured creditor; but after the taking of a dividend upon his whole debt as an unsecured creditor, to the prejudice of the general creditors, he must be held to his election. *In re Jaycox & Green*, vol. 8, p. 241.

### PROPERTY OF BANKRUPT.

See AFTER-ACQUIRED PROPERTY,  
ASSETS,  
ASSIGNMENT,  
CLAIM TO PROPERTY,  
CONCEALMENT,  
CUSTODY OF PROPERTY,  
DISPUTED TITLE,  
ENCUMBERED PROPERTY,  
EXEMPTION,  
EXPECTANT INTEREST,  
SALE OF PROPERTY.

#### 1. **Questions Concerning.**

A bankrupt having testified that he is not the owner of certain property, questions relating to the identity of the owner,

duration, extent, and character of the ownership of *that* property, are irrelevant. Questions relating to the value of furniture and fixtures, and whether a certain person or persons do not own certain property, are, unless the bankrupt is in both instances the owner, irrelevant. All questions which on their face relate to property that does not belong to the bankrupt, are irrelevant.—*Andrew P. Van Tuyl*, vol. 1, p. 636.

## 2. Title.

The bankrupts agreed to build a locomotive engine for the petitioners. They notified the petitioners that the engine was finished and dispatched, who thereupon paid the price. No such engine then existed; but two engines, either of which would answer the contract, were afterwards finished, and one of them was delivered to a third person before the bankruptcy. At the date of the bankruptcy the other was finished, but not dispatched.

*Held*, That the petitioners had a title to the engine as against the bankrupt and their assignees by estoppel.—*Rockford Rock Island Co.*, vol. 3, p. 50.

## 3. Vesting in Assignee.

The assignee takes the property of the bankrupt "in the same plight in which it was held by the bankrupt when his petition was filed."—*Wynne*, vol. 4, p. 23.

## 4. Idem. Subsequent Earnings.

The property of a bankrupt vests in his assignee as of the date of the commencement of proceedings, and no payment by or to him (the bankrupt) subsequent to that date is valid, even though made or received *bona fide* or without notice. The earnings and acquisitions of the bankrupt subsequent to the commencement of proceedings in bankruptcy, belong to him; liable, however, to execution or attachment by his former creditors, if he fails to receive his discharge.—*Mays v. The Manufacturers' National Bank of Philadelphia*, vol. 4, p. 446.

## 5. Represents the Credit given.

The property of an insolvent debtor represents, in whole or part, the credit given him by his creditors, and in good morals belongs to them, and the Bankrupt Act, which, under certain circumstances evinc-

ing bad faith upon the part of the insolvent, compels a distribution of such property among the creditors in proportion to their debts, is a wise and just measure.—*Silverman*, vol. 4, p. 523.

## 6. Right of Disposition.

In voluntary petitions in bankruptcy, the rights of the bankrupt to the disposition of his property cease on the filing of the petition. In involuntary petitions, such right ceases upon the adjudication.—*In re Geo. W. Dillard*, vol. 9, p. 8.

## PROPERTY UNWARRANTABLY TAKEN.

### 1. Cannot be held by Assignee.

Where the warrant to a marshal transcends the power conferred on a United States court by Section 40 of the Bankrupt Act, property taken possession of by the marshal from a person other than the bankrupt, cannot be held by the assignee in bankruptcy. Upon the petition of one so aggrieved, the assignee will be required to deliver the property in kind; and if this is impossible, then in default to pay over the proceeds.—*In re Harthill*, vol. 4, p. 392.

### 2. Property in Hands of Sheriff by Virtue of Execution.

The United States District Court has no authority to order property to be taken out of the hands of the sheriff who holds the same by virtue of an execution issued upon a judgment obtained in a State court, and the lien under the execution is *prima facie* valid. Therefore, until the writ is set aside on account of fraud, or for the reason that it is in violation of the Bankrupt Law, the assignee has no right to immediate possession of any of the property seized before the judgment is satisfied.—*In re W. H. Shuey*, vol. 9, p. 526.

## PROPORTION OF CREDITORS.

See AMENDMENT,  
PETITION.

## PROTECTION OF BANKRUPT.

See BANKRUPT.



## PROTEST.

## 1. Against Being Named as Creditor in Schedules.

A holder of a mortgage on real estate of the bankrupt, being named as a creditor in bankrupt's schedules, sought through his lawyer to file a protest against being so named, at the first meeting of creditors. Bankrupt objected because the paper was not signed.

*Held*, That inasmuch as the creditor did not appear in person or by duly constituted attorney, and had proved no debt, the protest could not be placed on file.—*In re Eliza Altenhain*, vol. 1, p. 85.

## 2. Liability upon Indorsement.

Until protest and notice, liability upon indorsement is not a provable debt.—*Loder*, vol. 4, p. 190.

## PROVABLE DEBT.

See CLAIM,  
CONTINGENT LI-  
ABILITY,  
DEBT,  
FRAUD,  
LIMITATION,  
PROOF OF DEBT,  
SECURED CRED-  
ITOR,  
SURRENDER,  
WIFE OF BANK-  
RUPT.

## PROVABLE DEBT—

- I. *Attorney's Services*, p. 580.
- II. *Commercial Paper*, p. 580.
- III. *Confederate Treasury Notes*, p. 581.
- IV. *Confusion of Goods*, p. 582.
- V. *Contingent Liability*, p. 582.
- VI. *Costs and Charges*, p. 582.
- VII. *Debt Created by Fraud*, p. 582.
- VIII. *Insurance*, p. 583.
- IX. *Interest*, p. 583.
- X. *Intoxicating Liquors*, p. 583.
- XI. *Judgment*, p. 583.
- XII. *Minor*, p. 584.
- XIII. *Partnership Debts*, p. 584.
- XIV. *Purchased Claims*, p. 584.
- XV. *Secured Debts*, p. 584.
- XVI. *Statute of Limitations*, p. 585.

XVII. *Torts*, p. 585.

XVIII. *Undue Claim*, p. 585.

XIX. *Wagers*, p. 585.

XX. *What is a Provable Debt*, p. 585.

XXI. *When it must Exist*, p. 586.

XXII. *Wife of Bankrupt*, p. 586.

I. *Attorney's Services.*

## 1. In Opposing Adjudication.

Where attorneys, among other charges against the assignees, claimed payment of fees out of the general fund for professional services rendered in opposing petitions to have a corporation adjudged an involuntary bankrupt,

*Held*, That the services were not rendered to the assignee, but to the bankrupt, prior to the adjudication, and the claim was a debt provable in bankruptcy.—*In re New York Mail Steamship Co.*, vol. 2, p. 554.

II. *Commercial Paper.*

## 2. Joint and several Notes.

A creditor who holds the note of a copartnership consisting of three members, indorsed by one of them for part of his debt, and also three notes, each made by one of the copartners, and indorsed by the two copartners other than its maker, and who proves his debt against the makers of the notes only, is entitled to dividends out of the several estates, joint or separate, against which the proofs were made. The copartners in this case were accommodation makers or indorsers for the copartnership, which, as between the copartners, and in equity, was the principal debtor.

*Held*, That the 36th Section of the Bankrupt Act of 1867 does not prohibit such creditor from proving his debts and taking dividends against the joint and separate estates of his debtors, he being a legal creditor of the individual copartners in respect of the note bearing their individual names.—*Mead, Assignee, v. National Bank of Fayetteville*, vol. 2, p. 173.

## 3. Current Money.

Proof of a note payable "in current money of the State" in which it is made, is, if not otherwise open to objection, allowable; and even though the State in which the note is made payable, should, at the maturity of the note, be in rebellion,



and it be claimed that such a demand should not be proved in bankruptcy as payable in lawful currency of the United States, but in the State treasury notes of the State in which the note was made, the objection cannot be sustained, and the owner of the note will be entitled to have his debt estimated at its face, with interest, in lawful money.—*Whittaker*, vol. 4, p. 160.

#### 4. Liability upon Indorsement.

Until protest and notice, liability upon indorsement is not a provable debt.—*Loder*, vol. 4, p. 190.

#### 5. Idem.

Where a note payable on demand was not presented for payment, and no demand made within four years, a protest at that time could not fix the liability of the indorser, and a claim of this nature cannot be proved against the estate of a bankrupt indorser.—*In re Francis Crawford*, vol. 5, p. 301.

#### 6. Part Payment by Indorser.

Where the holder of a note receives part of the amount of the same from the indorser, he is entitled to prove for the whole amount against the estate of the bankrupt maker, and holds any surplus he may receive over and above the amount of the note in trust for the indorser. If the creditor omits to prove his debt, thus showing he looks to the indorser alone for payment, the indorser is entitled to come in and prove the note against the bankrupt's estate, and receive dividends upon its whole amount.—*Ellerhorst*, vol. 5, p. 144; *Souther*, vol. 9, p. 502.

#### 7. Note Signed in Firm name in Individual Transaction.

A note given in an individual transaction of one of the bankrupts and in no manner for the benefit of the firm, though signed in the firm name, is not provable in bankruptcy against the joint estate.—*In re Forsyth & Murtha*, vol. 7, p. 174.

#### 8. Idem. Bona Fide Holder.

Notes drawn by one partner in the firm name, apparently in the course of partnership business, without *mala fide* or actual knowledge by the holder of want of authority or intended misapplication, entitle the holder to their allowance against the bankrupt estate of the firm.—*Van Camp*

*Bush, Appellant, v. Josiah Crawford, the Assignee of Dunkle & Dreisbach, Bankrupts, Appellees*, vol. 7, p. 299.

#### 9. Notes Discounted by Savings Institutions.

An application was made to expunge the proof of debt of the Peoples' Safe Deposit and Savings Institution, on certain notes discounted for the bankrupts in its regular course of business.

*Held*, That the notes in question were not valid, for the reason that the said savings institution was not authorized by law to employ its funds in discounting commercial or accommodation paper, and that the acts of its officers in discounting the notes upon which its claim is based were in direct violation of the provisions of the restraining laws of the State.

An order was entered expunging the proof and rejecting the claim as presented, but without prejudice to the right of the assignee in bankruptcy of the said savings institution to make proof of a claim or debt for money loaned to the said bankrupts.—*In re Jaycox & Green*, vol. 7, p. 578.

#### 10. Extension of Note.

A petition was made by the assignee to the Bankruptcy Court praying that the claim of a bank be expunged and that certain securities in its possession should be delivered up to him.

The claim consisted of three notes, upon two of which the bankrupt was indorser; the third note had been extended by agreement between the maker and the bank.

*Held*, That the first two notes were valid against the bankrupt's estate, but that his (bankrupt's) liability had been relieved in the third note by the agreement to extend the note, and was, therefore, not a valid claim, and must be expunged from the proof of debt, and that as the claim of the bank had been proved as an unsecured debt, it must relinquish the securities held by it to the assignee.—*In re Granger & Sabin*, vol. 8, p. 80.

### III. Confederate Treasury Notes.

#### 11. Loan of.

A debt incurred by the loan of Confederate treasury notes is not provable in bankruptcy.—*In re Jonathan J. Milner*, vol. 1, p. 419.

IV. *Confusion of Goods.*

## 12.

Where a bailee, prior to his bankruptcy, mixes the property bailed (wheat) with his own, so that the identical property cannot be distinguished, the bailor can only prove as a general creditor and share *pro rata* against the estate in bankruptcy.—*Adams v. Meyers*, vol. 8, p. 214.

V. *Contingent Liability.*13. *Dower Lien.*

The 5th Section of the Bankrupt Act of 1841, enacts that: "All creditors whose debts are not due and payable until a future day, all annuitants, holders of bottomry and respondentia bonds, holders of policies of insurance, sureties, indorsers, bail or other persons having *uncertain or contingent demands* against such bankrupt, shall be permitted to come in and prove such debts and claims under the Act, and shall have a right, when those debts or claims become absolute, to have the same allowed them; and such annuitants and holders of debts payable in future may have the present value thereof ascertained under the direction of such court, and allowed them accordingly, as debts *in presenti*."

Under this section, so long as it remains wholly uncertain whether a contract or engagement will ever give rise to an actual duty or liability, and there is no means of removing the uncertainty by calculation, such contract or engagement is not provable under the Act.

A claim for a breach of covenant that the grantor has an indefeasible estate in fee in land sold—the claim arising from the right of his wife, yet living, to be endowed of the estate—is of this character during the life of the husband.—*Riggin v. Magwire*, vol. 8, p. 484.

VI. *Costs and Charges.*14. *Costs Prior and Subsequent to Commencement of Proceedings.*

A debt or principal must be proven or allowed before the costs made prior to the commencement of proceedings in bankruptcy can be proven and allowed. Costs are but incident, if there is no principal or debt there can be no incident. Where the original debt has been proved and al-

lowed, attachment costs can be proved as a general debt against the estate of the bankrupt if made in good faith before the commencement of proceedings in bankruptcy without a knowledge of the insolvency of the party, and with no intention to defeat the operations of the Bankrupt Act. Costs incurred after the commencement of bankruptcy proceedings, also costs for attaching and keeping the exempt property, disallowed.—*In re Charles H. Preston*, vol. 5, p. 293.

15. *For Custody of Bankrupt's Property.*

The costs and charges against a bankrupt for care or custody of his property prior to the filing of a petition in bankruptcy, by or against him, under contract with him, express or implied, are debts of his, provable against his estate as debts simply, not as preferred claims.—*Gardner, Deputy Sheriff, v. Cook, Assignee*, vol. 7, p. 346.

VII. *Debt Created by Fraud.*16. *Is Provable.*

A debt created by fraud is provable under the Bankrupt Act. Where amount due to a creditor is in dispute, in a State court, the Court of Bankruptcy may allow the suit to proceed for the purpose of ascertaining the amount due, but execution will be stayed if the debt is such as will be discharged by a discharge in bankruptcy.—*In re Rundlo & Jones*, vol. 2, p. 113.

17. *Idem.*

After a bankrupt had filed his petition in bankruptcy he was arrested under an order of a State court, on an action to recover a debt that was shown, by affidavits to have been fraudulently contracted. While he was under arrest, an order was obtained from the Bankruptcy Court staying proceedings in the action in which he was arrested. The plaintiffs in the action moved to set aside the stay, although they had not proved their debt before the Register.

*Held*, That their debt was one which could not be discharged by a discharge in bankruptcy, nevertheless it was provable under the 19th Section of the Bankrupt Act.—*Rosenberg*, vol. 2, p. 236.

VIII. *Insurance.*

18.

In this case the first insurers only paid eighty-five cents on the dollar of their liability; yet the court held the receiver of that company properly proved his debt against the estate of the company re-insuring, for the full amount of their liability.—*In re Republic Insurance Co.*, vol. 8, p. 197.

IX. *Interest.*

19. **National Bank Charging more than Six Per Cent.**

The reservation of a greater rate of interest than six per centum by a national bank, or discounting a promissory note, does not render the debt for the principal thereof, one not provable in bankruptcy.—*In re Addison Moore ex parte The National Exchange Bank of Columbus*, vol. 1, p. 470.

20. **Bonus.**

Notes given for the excess or bonus over legal interest are not provable in bankruptcy, and must be surrendered to the assignee.—*Shaffer v. Fritchery & Thomas*, vol. 4, p. 548.

21. **Unaccrued Interest.**

Where all of a note falling due after the adjudication of bankruptcy is for unaccrued interest, the whole of said interest, so accruing after adjudication, must be disallowed, and the creditor can prove only for so much of the note as fell due previous to the commencement of proceedings.—*Riggs, Lechtenberg & Co.*, vol. 8, p. 90.

X. *Intoxicating Liquors.*

22. **Maine Liquor Law.**

That portion of the law of Maine relative to the sale of intoxicating liquors, which debar a creditor from maintaining a suit for liquors purchased without the State, with intent to sell the same in violation of the provisions of said act, does not prevent proof of such claim in bankruptcy against the estate of a bankrupt residing in said State, if such contract is valid at the place where made.—*In re Murray*, vol. 3, p. 765.

23. **Original Packages.**

A note was given in settlement of a balance due upon a previous account for spirituous and intoxicating liquors, part of

the consideration of which was based upon the sale of liquors in original packages. There was also another note given for liquors bought in Massachusetts.

*Held*, That as to the part of the first note which was based upon the sale of liquors in original packages, it was not in violation of the laws of Michigan and was valid; but as to the balance, there was nothing to take it out of the statutes of the State prohibiting the sale of spirituous and intoxicating liquors.—*In re Richard, Mary & S. R. Town*, vol. 8, p. 83.

XI. *Judgment.*

24. **Constitutes new Debt.—Not Provable when obtained after Adjudication.**

A judgment extinguishes the debt upon which it was founded, and constitutes a new debt. A judgment obtained after an adjudication of bankruptcy is not provable against estate of bankrupt.—*In re Williams*, vol. 2, p. 229.

25. **Contra.**

A creditor may prove a claim based on a debt existing at the time of proceedings commenced in bankruptcy, notwithstanding he may in a suit to recover the same have obtained judgment thereafter.—*Brown*, vol. 3, p. 584

26. **Contra.**

Where judgment had been ordered for a debt by a Justice of the Peace, previous to the adjudication of bankruptcy, and had not been satisfied,

*Held*, The debt is not so merged in the judgment as to deprive the creditor of the right to prove it.—*Vicery*, vol. 3, p. 696.

27. **Contra.**

A judgment rendered after proceedings in bankruptcy on a debt provable at the commencement of proceedings in bankruptcy does not prevent the original debt being proved in the bankruptcy proceedings.—*In re Louis H. Rosey*, vol. 8, p. 508

28. **Supersedeas and Writ of Error.**

At common law a writ of error and *supersedeas* of execution leaves a judgment intact, and it is a provable debt in bankruptcy.—*Sheehan*, vol. 8, p. 345.

XII. *Minor.*29. **Except for Necessaries.**

A debt contracted by an infant (not for necessities) cannot be proved in support of a petition in bankruptcy.—*In re Walter S. Derby*, vol. 8, p. 106.

XIII. *Partnership Debts.*30. **Ex-member of Firm.**

Where one who was a member of a late firm files his individual petition in bankruptcy, all his creditors can prove their claims, whether individual or partnership.—*Frear*, vol. 1, p. 660.

31. **Misappropriation of Partnership Funds.**

A fraudulent misappropriation of partnership funds by a copartner entitles the innocent partner to treat the act as foreign to the copartnership business, and to prove the debt as if the copartnership had not existed.—*In the matter of the petition of William P. Sigsby v. Alexander E. Willis*, vol. 3, p. 208.

32. **Assent of Partner to Appropriation of Trust Funds.**

Where an executor had invested funds of the estate in his partnership business with the knowledge and assent of his copartner, the parties entitled to the fund may prove their debts against the partnership, although they have proved against the estate of the executor.—*In re E. P. & E. M. Tesson*, vol. 9, p. 878.

33. **Money Drawn by and Goods Sold to Member of Firm.**

No proof can be made in bankruptcy between the joint and separate estates in respect either of money drawn out without fraud by one partner, or of goods sold to him by the firm, though he was to sell them again.—*In re G. H. Lane & Co. In re O. H. Boynton*, vol. 10, p. 185.

34. **Partner Common to Creditor and Debtor Firm.**

B. & G. were, at the time of their bankruptcy, indebted to the firm of G. & F. G. was a member of both firms; F. was not a member of the bankrupt firm, and he offered to prove the debt of his firm as the remaining or surviving partner having the right to wind up its affairs.

*Held*, That the debt should be admitted

to proof.—*In re Buckhause & Gough, ex parte C. L. Flynn*, vol. 10, p. 206.

XIV. *Purchased Claims.*35. **To Effect Compromise.**

There is nothing illegal in endeavoring to purchase all the claims against the estate of a bankrupt for the purpose of staying the bankruptcy proceedings altogether; failing in this, the purchaser should nevertheless be allowed to prove the claims purchased as though he were an original creditor.—*Pease et al.*, vol. 6, p. 173.

XV. *Secured Debts.*36. **Is Provable.**

A secured debt is provable within the meaning of Section 39 of the Bankrupt Act.—*Bloss*, vol. 4, p. 147.

37. **Deficiency.**

A creditor who has a mortgage may apply to the Bankrupt Court to have the property covered by his lien sold, the proceeds to be applied to the payment of his debt. Should the security fail to satisfy the claim, such creditor may be allowed to prove for the part remaining unpaid, and obtain a dividend thereon.—*Taylor R. Stewart*, vol. 1, p. 278.

38. **Idem.**

A creditor secured by a deed of trust caused the property to be sold, and bought in a portion thereof, the residue being sold to third parties, and applied to prove his debt in bankruptcy.

*Held*, That he should so prove it, and he would be allowed the same to an amount less the value of the property so sold to third parties, to be paid from the proceeds of the sale of the trust property. Any surplus from said sale would form part of the general assets. For any deficiency the secured creditor would become a general creditor to that extent, entitled to share in the general assets.—*Rushle*, vol. 2, p. 577.

39. **Idem.**

Before the choice of assignee, if such a mortgagee seeks to prove his debt, he must abandon his security, but, after appointment of assignee, he may prove for any balance of his debt, after deducting the value of the mortgaged property, as agreed upon with the assignee.—*High & Hubbard*, vol. 3, p. 191.

**40. Idem.**

By electing to pursue the mortgaged premises, mortgagees deprived themselves of any right to prove their debt in bankruptcy for the deficiency.—*The Iron Mountain Co. of Lake Champlain*, vol. 4, p. 645.

**41. Idem.**

A bank is entitled to certain shares of its capital stock, subscribed by the bankrupt as collateral security for his stock note, and also on his general indebtedness to the bank, and it has a right to hold such stock, although there is an indorser to the note.

The bank should prove its demand for the debt due as secured by the stock, and, by leave of court, have it sold, the proceeds to be applied to payment of the debt, and prove as a creditor of the estate for any balance that may remain.—*In re Thomas Morrison*, vol. 10, p. 105.

**XVI. Statute of Limitations.**

**42. Provable though Barred.**

Objection to the proof of a debt on the ground that it appears on its face that the Statute of Limitations, if set up, would bar it, is not tenable.—*Knoepfel*, vol. 1, p. 70.

**43. Debt Provable unless Barred throughout U. S.**

Bankrupt set forth in his schedules a debt due a creditor which was barred by the Statute of Limitations of the State in which both resided, and wherein the debt had been contracted. On the creditor seeking to examine the bankrupt, he objected.

*Held*, That the debt was provable in bankruptcy, unless it were shown to be barred throughout the United States.—*Ray*, vol. 1, p. 203.

**44. Idem.**

A debt barred by the Statute of Limitations of the State in which the bankrupt resides, may still be proven against his estate in bankruptcy.—*Sheppard*, vol. 1, p. 439.

**45. Contra.**

A debt barred by the statute of the State wherein debtor resides cannot be proved in bankruptcy.—*Kingsley*, vol. 1, p. 329.

**46. Contra.**

A debt barred by the Statute of Limita-

tions of Maine, where the bankrupt resides cannot be proved against his estate in bankruptcy by a creditor resident in another State, notwithstanding such demand is not barred by the Statute of Limitations in the State where the creditor resides.—*Harden*, vol. 1, p. 395.

**XVII. Torts.**

**47. Assault and Battery.**

An action for an assault and battery and false imprisonment, being in tort for a personal injury to the plaintiff, may be prosecuted to final judgment after the petition in bankruptcy is filed, and a judgment recovered may be proved against the bankrupt's estate, for the reason that a claim of this nature is not a provable debt until final judgment, hence does not come within the language of the second clause of Section 21 of the Bankrupt Act.—*In re Henocksburch & Block*, vol. 7, p. 37.

**48. Conversion.**

A claim for damages for wrongful conversion is provable under the 19th Section of the Act of 1867, and a discharge in bankruptcy would release a bankrupt from such a claim.—*Cole v. Roach*, vol. 10, p. 288.

**XVIII. Undue Claim.**

**49. Supports Petition.**

A creditor can file a petition against his debtor even though his claim is not due.—*Alex. R. Linn v. Smith*, vol. 4, p. 46.

**XIX. Wagers.**

**50. "Put" not Provable.**

A speculative option where the object of the parties is not a sale and delivery of the goods, but a settlement in money on differences—commonly called a "put," is a wagering contract and void, either as within the statutes against gambling or as against public policy, and is not a provable debt in bankruptcy.—*In re P. K. Chandler*, vol. 9, p. 514.

**XX. What is a Provable Debt.**

**51. Generally.**

Any debt which may be proved by complying with any of the provisions of the Bankrupt Act, is a provable debt.—*Rankin, etc., v. Florida R. R. Co.*, vol. 1, p. 647.



XXI. *When it must Exist.***52. At the Time of Filing Petition.**

It is the intention of the Bankrupt Act that such debts, and such only, as existed at the time of the filing the petition for adjudication of bankruptcy are provable against the bankrupt's estate.—*In re Francis Crauford*, vol. 3, p. 698.

**53. At Time of Adjudication.**

It was the intention of Congress to adopt the time of the actual adjudication of bankruptcy as the time at which a debt must exist in order to be provable, in contradistinction to the time of the commencement of the proceedings in bankruptcy.—*Henricksburgh & Block*, vol. 7, p. 37.

XXII. *Wife of Bankrupt.***54. Advances to Capital Stock of Husband's Firm.**

Whether a married woman may prove against the estate of a bankrupt firm, of which her husband was a member, the amount of a promissory note given by the firm to him for his contribution to capital stock—the money having been furnished by her, and the note transferred to her soon after its execution,

*Held*, The note was not an evidence of debt against the firm, but against her husband only. She may prove as against her husband and participate in the dividends of his individual estate, but not against the partnership estate.—*Frost & Westfall*, vol. 3, p. 736.

**55. Money Realized from Separate Estate.**

The bankrupt's wife may prove as a creditor against his estate in bankruptcy, for money realized by him out of property which she held as her separate estate under the statutes of Massachusetts, if the evidence clearly shows that the transaction was intended to be a loan and not a gift.—*In re E. G. Blandin*, vol. 5, p. 39.

**56. Appropriation by Husband of Wife's Property to Support of Family.**

Where a wife allows her husband to appropriate the *income* of her separate estate in the support of the family, this does not create such a debt on his part as is provable in bankruptcy against his estate. *Aliter*, where the principal of her separate property is allowed to be used by the husband.—*In re Jones et al.*, vol. 9, p. 556.

## PUBLICATION.

See ADVERTISEMENT,  
NOTICE,  
SERVICE.

**1. Designation of Newspapers.**

Where papers are designated by rules of the court in which notices are to be published, the Register cannot substitute other papers therefor in the district, but he may, in the exercise of judicial discretion, select other newspapers without the district, in which notices shall be published.—*Jesse H. Robinson*, vol. 1, p. 8.

**2. Proper Intervals—Once a Week.**

Notice was first published on Friday, next time on following Monday, and third time on next succeeding Monday.

*Held*, Insufficient publication. Seven days must elapse between each publication and the proceeding dependent thereon, in order to publish "once a week for three successive weeks."—*John Bellamy*, vol. 1, p. 64.

**3. Idem.**

Where a statute requires a notice to be published once a week for four weeks, in order to a strict compliance therewith, an interval of seven days must intervene between such publication.

*Hence*, a notice published on the eleventh, twenty-first, and twenty-seventh days of January, and on the first and tenth days of February, does not comply with the terms of the statute, and any proceedings based on such publication must fail on account of this irregularity.—*J. King & W. King*, vol. 7, p. 279.

**4. Of Application for Discharge.**

If no creditors have proved their debts, and no assets have been received by the assignee at the time the bankrupt applies for his discharge, the only notice which can be given is by publication, at the discretion of the court.—*Anonymous*, vol. 1, p. 122.

## PURCHASE OF CLAIMS.

See CLAIM,  
MUTUAL DEBT,  
SET OFF.

**1. Mala Fides.**

Where it appeared to the court from the facts shown by the evidence taken on a reference had on a petition of a supposed



creditor, that certain claims of other creditors be disallowed and rejected, that he had purchased claims against the bankrupts to prove as a creditor, while he was, in fact, acting in their interest,

*Held*, All proofs of claims by him, or of claims purchased by him, should be stricken out. A reference will be ordered by the court without any application therefor by which to ascertain such claims.—*In re Robert Lathrop and others, composing the firm of Lathrop, Cady & Burtin*, vol. 3, p. 410.

## 2. In Interest of Debtor.

Where nearly all the debts against a bankrupt copartnership, composed of three copartners, have been purchased in the interest of two of the copartners, by two of their friends, to whom the money for such purchase was furnished by those partners, the third partner not contributing, objects to the proof of the purchased claims as illegal, although it is not denied but that they were originally *bona fide* claims against the copartnership.

*Held*, That a decree will be entered providing for the payment in full, by the assignees, of the unpaid and unpurchased proved debts, with interest; for the payment into court of the amount of the unpaid unproved debts, with interest; for the payment of the commission of the assignees, and the charges, fees, disbursements, and expenses of their attorney and counsel, and the fees of the Register and clerk; for the payment to the two purchasers (friends of two of the bankrupts) of the amount paid out by them in the purchase of the copartnership debts, together with interest; for the transfer of the remainder of the estate by the assignee to the bankrupts jointly by proper instruments.—*In re Lathrop et al.*, vol. 5, p. 43.

## 3. Idem.

There is nothing illegal in endeavoring to purchase all the claims against the estate of a bankrupt for the purpose of staying the bankruptcy proceedings altogether; failing in this, the purchaser should nevertheless be allowed to prove claims purchased as though he were an original creditor.—*In re Pease et al.*, vol. 6, p. 173.

## 4. As a Set-off.

A debt of one insolvent purchased by his debtor immediately prior to the filing of a petition in bankruptcy, and purchased in order to set the same off against his indebtedness, is protected by the Bankrupt Act, it only forbidding the set-off of claims purchased after petition filed.—*Hovey et al. v. Home Insurance Company*, vol. 10, p. 224.

## PURCHASER.

See SALE,  
SET-OFF.

## 1. With Notice of Insolvency.

Where a party knows at the time of purchasing goods that the bankrupts had failed in business, and that his vendors held the goods under mortgage from the bankrupts, these facts are sufficient to put him upon his guard, and he is bound to inquire into the transactions between the bankrupts and his own vendors.—*Rison, etc., v. Knapp*, vol. 4, p. 349.

## 2. Idem.

The purchaser on the title failing which he supposed he got, would be restored to his rights as mortgagee as they existed when he attempted to purchase, and he would lose nothing more than his title under the purchase.—*Kahley et al.*, vol. 4, p. 378.

## 3. Idem. Under Amendment of 1874.

In almost every case where a jury would be warranted in finding that a purchaser had good reason to believe, under the old statute, they would be justified in finding that he "knew" under the amended law, so that, practically, the amendment is merely a verbal one in that respect.

Whatever fairly puts a party upon inquiry, when the means of knowledge are supposed to be at hand, if he omits to inquire, he does so at his peril, and he is chargeable with the knowledge of all the facts which, by a proper inquiry, he might have ascertained.—*R. S. Hamlin, Assignee, v. W. C. Pettibone*, vol. 10, p. 173.

## 4. Idem. Pending Proceedings.

An alleged bankrupt, during the pendency of bankruptcy proceedings, and while under an injunction from the United States District Court prohibiting him from

selling or disposing of any of his property, sold certain promissory notes belonging to him. He was finally adjudged a bankrupt.

*Held*, That the purchaser acquires no title to the notes in question, as he took with constructive notice at least, and cannot claim to be an innocent purchaser for value. That the adjudication relates back to the time of the filing of the petition, and the assignee may recover the notes or their value from the purchaser.—*J. J. Lake*, vol. 6, p. 542.

#### 5. *Idem*. Of Fraud.

Where a bankrupt sells to his brother-in-law his entire stock at twenty-five per cent. below cost, and the brother-in-law sells to a stranger at an advance of five per cent. on the purchase price, informing him at the same time of the circumstances of the purchase, the sale will be set aside at the instance of the assignee.

The second purchaser takes the risk of the title of the first purchaser, when informed of sufficient facts to put a prudent man on inquiry.—*Abraham and Daniel Walburn v. James C. Babbitt, Assignee*, vol. 9, p. 1.

#### 6. *Idem*.

A purchaser, with notice, who acquires his title from a purchaser at sheriff's sale, where the first purchaser had the property knocked off to him at a mere nominal sum by a bare-faced fraud (in this case falsely stating that the sale was made subject to a mortgage of greater value than the property) takes no better title than his vendor had.—*Harrell v. Beal, Assignee*, vol. 9, p. 49.

#### 7. *Bona Fides*.

The assignee in bankruptcy has no greater right than a judgment creditor, and although a sheriff's deed may be given as a mere cover, yet if his grantee convey such property to a *bona fide* purchaser without notice, for value, that deed will be protected.—*Beall v. Harrell*, vol. 7, p. 400.

#### 8. At Sheriff's Sale, after Commencement of Proceedings.

A purchase at sheriff's sale, after proceedings commenced in bankruptcy, where the levy was made prior thereto, will acquire a good title notwithstanding that the judgments under which the sale took place

are afterwards declared void as in fraud of the act—*Zahn v. Fry et al.*, vol. 9, p. 546.

#### 9. At Assignee's Sale.

Where property is sold by an assignee in bankruptcy without an order of the court, the purchaser will be entitled to the rents and profits of the property from the day of sale, and not from the day of confirmation of the sale by the court.—*Hall v. Scott*, vol. 10, p. 296.

#### 10. May Prosecute in His own Name.

The purchaser of a claim can prosecute the suit in his own name, or there may be judgment rendered in favor of the plaintiffs for his use, and he has a right to maintain the suit in a court of equitable jurisdiction on proof of his equitable interest in the account.—*J. P. Morris et al. v. H. Swartz*, vol. 10, p. 305.

### RAILROAD CORPORATIONS.

See ACT OF BANKRUPTCY,  
ADJUDICATION,  
CORPORATIONS.

#### 1. Amenable to Act.

The grantee of the franchises of a corporation to operate a railroad, can acquire no greater rights than the corporation itself has by the terms of its charter. The purchaser must take his title subject to all the conditions of the original grant, and subject to all duties and liabilities to the State, the public, and individuals, none of whose rights can be impaired by the transfer. Hence, there are no such inherent difficulties in the way of the sale and transfer of the property and franchises of a railroad as would require such a construction to the United States Bankrupt Act of 1867, excluding railroad corporations from the operation of that clause of the act, a literal construction of which clearly rendered them liable to be dealt with under its provisions.—*Adams v. Boston, Hartford & Erie Railroad Company*, vol. 4, p. 314.

#### 2. *Idem*.

A corporation carrying on and pursuing any lawful business defined and clothed by its charter with power to do so is clearly a business corporation, and amenable to the provisions of the Bankrupt Act, therefore the objection to the adjudication of a railroad company because it is not a moneyed business, a commercial corporation, or a

joint stock company cannot be taken. For it seems to be the clear intent of the 37th Section to bring within the scope of the Bankrupt Act all corporations except those organized for religious, charitable, literary, educational, municipal, or political purposes.—*Ala. & Chattanooga R. R. Co. v. Jones*, vol. 5, p. 97.

### 3. Idem.

A railroad is a commercial corporation, and hence subject to the provisions of the Bankrupt Act, and within the definition of the 37th Section.—*Sweatt v. Boston, Hartford & Erie R. R. Co.*, vol. 5, p. 234.

### 4. Idem—Cannot be Proceeded Against for mere Suspension of Payment—Agreements for Transfers of Stocks—Issues of Stocks.

Railways fall within the designation of business or commercial corporations and are clearly within the operation of the Bankrupt Act.

A railroad company organized under the laws of Iowa is neither a banker, broker, merchant, trader, manufacturer, nor miner, within the meaning of these words as used in the Bankrupt Law, and cannot be proceeded against in bankruptcy for the mere suspension or non-payment, however long continued, of its commercial paper.

An *unexecuted* agreement by a company to transfer its stock cannot be construed into an act of bankruptcy.

The issue, at par, of the stock of the company, not heretofore issued in payment of a *bona fide* debt, would not be a fraud on the creditors. If, however, it was owned by the company as paid-up stock, lawfully acquired, the transfer thereof to creditors, under such circumstances as would give them an illegal preference, would be an act for which the company could be proceeded against under the Bankrupt Law.—*Winter v. The Iowa, Minnetona and North Pacific Railway Co.*, vol. 7, p. 289.

### 5. Idem—Fraudulent Transfers.

A railroad corporation may be adjudicated bankrupt for a transfer in fraud of the Act.—*Southern Minn. R. R. Co.*, vol. 10, p. 87.

### 6. Receivers under State Court.

The United States District Court in bankruptcy will not interfere with the posses-

sion of receivers appointed by the State courts to take charge of the property of a railroad, until their title is impeached for some cause for which it is impeachable under the Bankrupt Act, nor is it for the Bankruptcy Court, before such title is thus impeached, to interfere with the management or control of such railroads and other property by such State courts, or by such receivers under the orders of such State Courts.

Injunction heretofore granted in this case, so far modified as to allow the receivers to enter upon the discharge of their duties, and give the security required by the State court.—*Alden v. Boston, Hartford & Erie R. R. Co.*, vol. 5, p. 230.

### 7. Cannot be Proceeded Against Except where Actually Existing.

A railroad company incorporated by the laws of the State for constructing, maintaining and operating a railroad, cannot be proceeded against in bankruptcy in a District Court without the State or States where its railroad is to be built, maintained, and operated, on the petition of a creditor charging an act of bankruptcy. Allegation and proof that such company kept an office in said district for six months next preceding the filing of the petition, where its officers acted, its board of directors met, and where it contracted debts, made loans, purchases and payments, does not give such court jurisdiction.

The business of a railroad company, in the sense of the act, can only be carried on where the railroad is or is to be constructed, maintained, and operated; hence, the District Court of the United States for the Southern District of New York, has no jurisdiction to adjudge an Alabama railroad corporation a bankrupt on such a petition by a creditor.—*In re Alabama & Chattanooga Railroad Co.*, vol. 6, p. 107.

## RATIFICATION.

### See POWER OF ATTORNEY.

### 1. By Stockholders of Action of Board of Trustee.

Subsequent ratification of the act of the Board of Trustees in filing petition by stockholders, does not cure the defect of a want of jurisdiction in the Register, at the com-

mencement of the proceedings. — *In re Lady Bryan Mining Co.*, vol. 4, p. 394.

**2. Within Four Months of Commencement of Proceedings.**

Where an officer of a corporation, without authority, executed a deed of trust of its property as security for a negotiable instrument more than four months prior to commencement of proceedings in bankruptcy, and his act is afterwards ratified by the corporation, but within the four months prior to commencement of the proceedings the validity of the deed must be determined by the circumstances existing at the time of the ratification, and not by those of the time of the original execution. — *In re the Kansas City Stone & Marble Manufacturing Co.*, vol. 9, p. 76.

**3. The Act Ratified.**

One can only ratify a previous act when he is capable, *at the time of ratification*, of then performing the act ratified. — *Cook et al., Assignees, v. Tullis*, vol. 9, p. 433.

**REASONABLE CAUSE.**

See ASSIGNMENT,  
CONVEYANCES,  
FRAUD,  
POWER OF ATTORNEY,  
PREFERENCE,  
TRANSFERS.

**1. Knowledge that Debtor cannot Pay in Ordinary Course of Business.**

A creditor who knows that his debtor cannot pay all his debts in the ordinary course of his business, has reasonable cause to believe his debtor to be insolvent, and will not be allowed to secure, by confessions of judgment and the levy of executions, any preference over other creditors, and the assignee in bankruptcy may recover the property seized and taken upon executions under such judgments, or the value thereof. — *Wilson, Assignee, v. Brinkman et al.*, vol. 2, p. 468.

**2. Idem.**

When the execution creditor knew that his debtor was unable to pay his debts at maturity he was put upon inquiry at once, and must be adjudged chargeable with the knowledge he would have thus obtained, and guilty of receiving a preference with reasonable cause to believe his debtor insolvent. — *Forsyth & Murtha*, vol. 7, p. 173.

**3. Is what would Put a Prudent Man upon Inquiry**

A sale cannot be declared void unless the purchaser had reasonable cause to believe the seller to have been insolvent when he made the sale, and reasonable cause means a state of facts which would put a prudent man upon inquiry as to the condition of the person from whom he purchases. — *J. R. McDonough, Assignee, v. Raftery*, vol. 3, p. 222.

**4. Idem.**

A creditor has reasonable cause to believe a debtor, who is a trader, to be insolvent, when such a state of facts is brought to the creditor's notice respecting the affairs and pecuniary condition of the debtor as would lead a prudent business man to the conclusion that he is unable to meet his obligations as they mature in the ordinary course of business. — *Toof et al. v. Martin*, vol. 6, p. 49.

**5. Idem.**

A corporation that is unable to pay its debts as they become due, in the ordinary course of its daily transactions, is insolvent, and a creditor may be said to have reasonable cause to believe in the existence of such insolvency when such a state of facts is brought to his notice, respecting the affairs and pecuniary condition of his debtor, as would lead a prudent business man to the conclusion that the debtor was unable to meet his obligations as they matured in the ordinary course of business.

Where it appears that the debtor who gives a preference to a certain creditor was actually insolvent, and that the means of knowledge upon the subject were at hand, and that such facts and circumstances were known to the creditor securing the preference, as clearly ought to have put him upon inquiry, as a prudent man, it would seem, to be a just rule of law to hold that he had reasonable cause to believe that the debtor was insolvent, if it appears that he might have ascertained the fact by reasonable inquiry. Under such circumstances ordinary prudence is required of a creditor, and if he fails to investigate he is chargeable with all the knowledge it is reasonable to suppose he would have acquired if he had performed his duty. — *Buchanan et al. v. Smith, Assignee*, vol. 7, p. 518.

**6. Prima Facie Evidence of Fraud is.**

Where a creditor has before him what the statute declares shall be *prima facie* evidence of fraud, he must, in law, be deemed to have reasonable cause to believe the existence of such fraud, until the legal presumption is overborne by opposing evidence.—*Kingsbury*, vol. 3, p. 818.

**7. Presumption of.**

Where a creditor accepts a security he is conclusively presumed to know what appears on its face, and to have reasonable cause to believe it was intended to accomplish its ordinary and necessary effect.—*Graham, Assignee, v. Stark*, vol. 3, p. 357.

**8. Suspicion of Insolvency.**

When a person suspects the solvency of his debtor, and in consequence of that suspicion obtains property or money, and thereby a preference, and it turns out in fact that his debtor is insolvent, that he may be said to be in the predicament contemplated by the Bankrupt Law, he has reasonable ground to believe that his debtor is insolvent, and cannot avail himself of a judgment or security so obtained.—*Campbell, Assignee, v. Traders' National Bank*, vol. 3, p. 498.

**9. Exacting Security.**

Debtors, merchants, knew themselves to be insolvent, but represented to creditors on debts past due that they were solvent. The creditors, however, exacted as security a chattel mortgage, dated May 9th, 1868, on a large portion of debtors' goods, and on a failure to receive payment of an installment thereunder, took possession on the 15th of July, 1868, under the mortgage, sold the goods and applied the proceeds. Thereafter, on August 3d, 1868, debtors filed petition in bankruptcy, and were duly adjudged bankrupts. Assignee in bankruptcy brought action against the creditors to recover the value of the goods so sold.

*Held*, Said mortgage was, within the meaning of Section 35 of the statute, made by the bankrupts with a view to give a preference.

The debtors had reasonable cause to believe that their debtors were insolvent when the mortgage was made and it constituted a fraudulent preference. Judgment in favor of plaintiff.—*Driggs, Assignee, v. Moore*, vol. 3, p. 602.

**10. Being Obligated to Resort to Legal Measures to Recover Claim.**

A person is held to be insolvent when he is unable to discharge his debts in the usual course of business of persons engaged in the same trade or occupation, hence, where creditors have accounts overdue seven or eight months, and finally have to resort to legal measures for the collection of them, they must be considered as having reasonable cause to believe their debtor insolvent.—*Stranahan, Assignee of Banister v. Gregory & Co.*, vol. 4, p. 427.

**11. Actual Knowledge Immaterial.**

If an insolvent gives a mortgage to a creditor who has reasonable cause to believe him insolvent, the fraud upon the Bankrupt Act is complete as to both. The question as to the creditor is whether he "had reasonable cause to believe" the debtor insolvent—not what he *did* believe; the latter is immaterial. The creditor is not constituted the sole judge of the sufficiency of the evidence of his debtor's insolvency, that is for the court to determine, the security being attacked.

Where a debtor had, during two years, paid off only a small portion of an overdue debt, had sold out the stock of goods for which the account was made, and transferred a part of the paper received therefor; had applied for extensions and been refused; had previously declined to execute a mortgage on the ground that it would injure his credit, and had been pressed by his different creditors, these facts constitute reasonable cause for belief of insolvency, and the creditor cannot escape from the consequences of knowledge of them.—*Hall v. Wager & Fales*, vol. 5, p. 182.

**12. Knowledge that Pressure would Embarrass Debtor.**

The president of a bank, being informed before suits were commenced, that if the bank should press the debtor for payment it would embarrass him, and having other evidence of his insolvency, had reasonable cause to believe his debtor insolvent.—*Richard Warren, Assignee, v. The Tenth National Bank & Matthew T. Brennan*, vol. 7, p. 481.

**13. Amendment of 1874 — Change only Verbal.**

The change made in the 35th Section of



the Bankrupt Act, by the recent amendment in the substitution of "knew" for "had reason to believe," is merely a verbal one in that respect. Whatever fairly puts a person upon inquiry, with "reason to believe," charges him with a knowledge of all the facts which, by proper inquiry, he might have ascertained.—*Hamlin v. Pettibone*, vol. 10, p. 178.

**14. Information from Debtor that he was "Hard Pressed."**

A. & Co. had been, for a number of years, the commission merchants of the bankrupts, who were merchants, dealing mainly in cotton.

They advanced a large sum of money to the bankrupts, supposing that they had advanced the entire cash capital required by the bankrupts, and expected in return to receive all the cotton shipped by them. Notes of the bankrupts were presented for payment at the office of A. & Co., and were protested for non-payment. A short time after this, one of the bankrupts visited A. & Co., and informed them that they were hard pressed, that they owed a large debt besides that due to A. & Co., and requested aid in arranging it. A. then went to the place of residence of the bankrupts and obtained a judgment for the amount due his firm, with the intention thus to receive the entire estate for an equal distribution among creditors.

On a motion to expunge the proof of debt of A. & Co.

*Held*, That they had reasonable cause to believe their debtors insolvent before obtaining their judgment.—*Harrison v. McLaren*, vol. 10, p. 244.

**15. Receiving Payment "with Cause to Believe."**

A creditor receiving payment with "cause to believe" his debtor insolvent, is presumed to *know* that such debtor thereby intended a fraud upon the Act.—*Brooke v. McCrackin*, vol. 10, p. 461.

**RECEIVER.**

See ACT OF BANKRUPTCY,  
COURTS,  
DISTRIBUTION,  
FORECLOSURE,  
MORTGAGE,  
PRACTICE,  
RENT.

**1. Where Property Transferred by Voluntary Assignment.**

Assignee in bankruptcy filed bill to set aside as null and void a voluntary assignment for benefit of creditors made by bankrupts, and, pending the suit, moved that a receiver be appointed. The voluntary assignees had given security, by order of State Court, for the faithful performance of their duties, but had been enjoined from action in the premises by the Bankruptcy Court.

*Held*, That it was a proper case for the appointment of a receiver, and one would be appointed.—*John Sedgwick, as Assignee in Bankruptcy of James K. Place & James D. Sparkman v. James K. Place and others*, vol. 8, p. 140.

**2. By State Court Prior to Adjudication.**

Where creditors, prior to the commencement of bankruptcy proceedings by other creditors, recovered a judgment and caused execution to be issued and levy made on certain property of the debtor, and also commenced supplementary proceedings in a State court and had a receiver appointed for certain choses in action, and where, after the adjudication of the debtor's bankruptcy, the receivership under the State court was extended to all the debtor's property, and the assignee in bankruptcy was not made a party thereto,

*Held*, The appointment of an assignee in bankruptcy relates back, and clothes him with title to all the bankrupt's legal and equitable rights and interests, and choses in action which belonged to him, on presentation of petition.—*Buchanan et al. v. Smith*, vol. 4, p. 397.

**3. Possession not Interfered with until Title Judicially Impeached.**

The United States District Court in bankruptcy will not interfere with the possession of receivers appointed by the State courts to take charge of the property of a railroad until their title is impeached for some cause for which it is impeachable under the Bankrupt Act; nor is it for the Bankruptcy Court, before such title is thus impeached, to interfere with the management or control of such railroads and other property by such State courts or by such receivers



under the orders of such State courts. Injunction heretofore granted in this case so far modified as to allow the receivers to enter upon the discharge of their duties and give the security required by the State court.—*Alden v. The Boston, Hartford, & Erie R. R. Co.*, vol. 5, p. 280.

**4. Appointed by State Court cannot be one of Trustees under Section 43.**

A receiver appointed under an order of a State court cannot be one of the trustees appointed under Section 43 of the Bankrupt Act, for the reason that he must account, if at all, as receiver, to a trustee or assignee to be appointed by the United States District Court, for the property as it stood at the date of the commencement of bankruptcy proceedings, and it is not proper that he should, as trustee, be plaintiff, and, as receiver, be defendant. It appearing, furthermore, that the receiver does not intend, voluntarily, to surrender his receivership when appointed a trustee by the court, but expects to have his acts as receiver and trustee confirmed by the respective courts, this court decides that his position is one of incompatibility, for if he is to be trustee under the Bankrupt Act, he must look to this court alone for authority and direction. For the same reason a receiver cannot be appointed assignee although three fourths in value of the creditors whose claims were proven nominated him as trustee.—*In re Stuyvesant Bank*, vol. 6, p. 272.

**5. Restraining Provisionally.**

A corporation was dissolved by a decree of a State court, and a receiver appointed before adjudication, but after the service of an order to show cause, injunction granted restraining the State court receiver from disposing or interfering with the property of the corporation, and from setting up and asserting, as against the assignee in bankruptcy, any title to or right of action for any of said property, and enjoins, pending this action, and by final decree, from doing any acts to carry out or effectuate the trusts purporting to be created by his appointment as receiver.

Assignee appointed receiver on giving a stipulation to charge no commissions on such assets of the receivership as shall pass from the State receivership to the trust

represented by the assignee of the bankrupt.—*Platt v. Archer*, vol. 6, p. 465.

**6. Appointed without Warrant of Law.**

The State statute under which the appointment of a receiver was made has no application whatever to corporations; hence all proceedings taken in pursuance of such statute must be regarded as unauthorized and void. Decree of the court below affirmed.—*Buchanan et al. v. Smith*, vol. 7, p. 513.

**7. May Prove Claim of Corporation in Bankruptcy.**

A receiver of a corporation, duly appointed, on its dissolution, by the law of the place where the corporation was created, will be recognized as a proper representative of such corporation in bankruptcy, and, as such, allowed to prove all claims due to the corporation he represents.—*In re Republic Insurance Company*, vol. 8, p. 197.

**8. Idem. Of non-resident Debtor.**

Partners were sued individually on a firm note. One became a non-resident, and the creditor caused an attachment to be issued against him. The resident owed the non-resident money, but had been declared bankrupt, and the holder of the note garnisheed the assignee in bankruptcy.

*Held*, The State court had not jurisdiction, to garnishee but that a receiver of the non-resident's effects should be appointed to represent the non-resident in the bankruptcy distribution, and to receive from the assignee all moneys coming to him, and then to account for them to the State court.—*Jackson v. Miller*, vol. 9, p. 143.

**9. Original Suits against not Allowed except by Special Leave.**

Where property in the hands of a receiver, no party having interest therein, and much less will actual parties be permitted, without leave of court, to seek an enforcement of their rights by an original suit. Such leave will in no case be granted where the relief sought is competent in the pending litigation.—*Sutherland et al. v. Lake Superior Co.*, vol. 9, p. 298.

**10. Appointed to Secure Rent.**

An application was made for an injunction to restrain certain parties from collecting rents from real estate in which the

bankrupts have a legal or equitable interest.

*Held*, That an injunction should be granted and a receiver appointed.—*Keenan v. Shannon*, vol. 9, p. 441.

#### 11. May Sue in different State.

A receiver appointed by the courts of one State may generally, *ex comitate*, sue in the courts of another State.—*Chandler v. Siddle*, vol. 10, p. 236.

#### 12. Copartner may file Petition in Bankruptcy after Appointment of.

After proceedings have been commenced in a State court by one of the members of a copartnership to put an end to the partnership, and for an account, and the property is in the hands of a receiver, it is competent for another member of the firm to file a petition in bankruptcy to have himself and the firm adjudged bankrupt.—*In re Noonan*, vol. 10, p. 330.

#### 13. Holding—merely Suspensive—Does not affect Title.

Where the court takes possession of property and places the same in hands of a receiver, the rights of parties are not thereby affected. The receiver holds for the *legal owner*—and the action of the court is merely suspensive.—*Miller v. Bowles*, *Appleton v. Stevers*, vol. 10, p. 515.

### RECONSTRUCTION.

See WAR.

### RECORD.

See ASSIGNEE,  
ASSIGNMENT,  
EVIDENCE.

#### 1. Acknowledgment of Assignment.

An assignment executed to the assignee by the Register, there being no opposing interest, does not require to be proved before a clerk of the Superior Court, or his certificate to prepare it for registration.

Registers of deeds must record the same upon a certificate of the clerk of the District Court, that the same is a copy of the assignment on file in his office, with his seal affixed, upon demand that the same shall be recorded, and a tender to him of the fees allowed for such service by the laws of the State.—*Neale*, vol. 3, p. 177.

#### 2. Validity against Creditors.

The recording is only necessary to make

an instrument valid against creditors under State laws, and the Bankrupt Act recognizes and respects such validity if it be prior to bankruptcy proceedings.—*Charles H. Wynne*, vol. 4, p. 23.

#### 3. Valid Inter Partes—Without.

A mortgage executed in a State having no statute on the subject of record, or if record is not required between the parties, will not be defeated by the proviso in Section 14 of the United States Bankrupt Act of 1867 in relation to recording.—*Dow*, vol. 6, p. 10.

#### 4. Assignment by Register to Assignee.

It is not essential to the title of the assignee that the assignment to him by the Register should be recorded within six months from its date. The title of the assignee takes effect by relation from the commencement of the proceedings in bankruptcy, and the recording is not required for the mere purpose of giving notice to purchasers.—*Davis v. Anderson et al.*, vol. 6, p. 146.

#### 5. Validity Effected by Record.

A deed of trust made by a bankrupt more than four months prior to the commencement of proceedings in bankruptcy, which, by the law of the State where made, is valid between the grantor and grantee, and against subsequent purchasers with actual notice, without being recorded, cannot be avoided by the assignee in bankruptcy, under Section 35, because not recorded until within four months prior to the commencement of the proceedings in bankruptcy. *Aliter*, If by the law of the State where executed the recording is a condition precedent to its validity.—*Seacer v. Spink*, vol. 8, p. 218.

#### 6. Aliunde Evidence to Contradict.

Evidence in proceedings to release a debtor by *habeas corpus* cannot be received to contradict the declaration, and to show that no such cause of action really exists as is therein set forth.—*In re Devos*, vol. 2, p. 27.

#### 7. Amendment.

Every court has power to alter and amend its records so as to conform to the truth during the term to which the record relates, and a court is bound to presume that the evidence offered in support of an amendment was legal and suffi-

cient.—*Alabama & Chattanooga Railroad Co. v. Jones*, vol. 7, p. 145.

## RECOVERY OF PROPERTY.

See ASSIGNEE,  
ASSIGNMENT,  
CONVEYANCES,  
COURTS,  
FRAUD,  
JURISDICTION,  
PRACTICE,  
TROVER.

## 1. Fraudulent Conveyance prior to Bankrupt Act.

When a debtor, before the passage of the Bankrupt Act, conveyed his property with intent to defraud his creditors, and afterwards was adjudged a bankrupt, his assignee in bankruptcy may maintain an action to recover back such property for the benefit of the creditors.—*Bradshaw, Assignee, v. Henry Klein et al.*, vol. 1, p. 542.

## 2. Received with Knowledge of Insolvency.

When a creditor has reasonable cause to believe his debtor insolvent, purchases goods of him, and such debtor makes the sale with the view of giving a preference, the transaction is void, and the assignee in bankruptcy of such insolvent may recover the value of the goods from such creditor.—*J. R. McDonough, Assignee, v. Raftery*, vol. 3, p. 221.

## 3. Two Years' Limitation (Title Undisputed).

A demurrer to the petition of the bankrupt's assignee to recover property fraudulently conveyed by one who claims the property (merely to satisfy a lien) by virtue of a voluntary assignment of the debtor, will not be sustained simply on the ground that more than two years have elapsed since the cause of action accrued.—*In re Krogman*, vol. 5, p. 116.

## 4. In Recovering Proceeds only actual Expenses of Conversion Allowed.

Where a creditor takes an unlawful preference by executions and seizes the bankrupt's property, the assignee is entitled to recover from the creditor such property or its value, and in the accounting the creditor is only to be allowed credit for the

actual expenses of sale, which does not include the sheriff's fees.—*Sedgwick v. Millward*, vol. 5, p. 347.

## 5. Execution while Insolvent of prior Bona Fide Contract.

A transfer which is only the execution of a contract made when there was no circumstance to impeach it as an intended fraud on the Bankrupt Law, and when the parties were acting in good faith, and long before anything occurred to throw a suspicion over the solvency of the debtor, will be protected, and a bill brought by the assignee in bankruptcy to recover personal property conveyed under the above state of facts will be dismissed.—*In re Wood*, vol. 5, p. 421.

## 6. Stoppage in Transitu.

A contract with B for the sale of certain scales, payment to be made by B's note on their delivery and after they were set up. They were delivered but not set up according to contract, and B's note was not given. Soon after this B was declared bankrupt. A petitioned to have his goods returned, which was granted, and an order entered according.—*In re Pusey*, vol. 6, p. 40.

## REFERENCE.

See AMENDMENT,  
COURTS,  
DISCHARGE,  
PETITION.

## 1. Petition for Discharge.

The special order referring a petition for discharge to the Register is necessary. Form No. 4 is a general order of the District Court, made in each case under General Order 5, and is not a special order.—*John Bellamy*, vol. 1, p. 113.

## 2. Ascertainment Proportion of Creditors Petitioning.

Where, by a comparison of the list of creditors filed by the debtor, with the list of petitioning creditors, it appears that the provable debts due the creditors who have petitioned do not equal one-third of the aggregate provable debts due to such of the creditors of the debtor as hold provable debts exceeding the sum of two hundred and fifty dollars, an order will be made referring the matter to the clerk of the court

to determine this issue on such evidence as may be introduced before him.

On an issue formed by the debtor, as provided in Section 9 of the Amendment of June 22, 1874, as to whether the petitioning creditors constitute the requisite proportion of creditors—the affirmative of the issue is on the petitioning creditors.

On a reference to ascertain whether the petitioning creditors constitute the requisite proportion, the petition, statement, and list form part of the proceedings on the reference—the debtor must attend on the reference, and submit to an examination, if desired, as to all matters pertinent to the issue.—*In re Jacob Hymes*, vol. 10, p. 433.

## REGISTER.

See ACCOUNTS,  
ACT OF BANKRUPTCY,  
ASSIGNEE,  
ASSIGNMENT,  
BOND,  
CERTIFYING QUESTIONS,  
COST AND FEES,  
DISCHARGE,  
EXEMPTION,  
FRAUD,  
PROOF OF DEBT.

## REGISTER—

- I. *Amendment*, p. 596.
- II. *Assignee*, p. 596.
- III. *Assignment*, p. 597.
- IV. *Attorney*, p. 597.
- V. *Auditing*, p. 597.
- VI. *Bankrupt*, p. 597.
- VII. *Books and Papers*, p. 598.
- VIII. *Certificate of Conformity*, p. 598.
- IX. *Certifying Questions*, p. 598.
- X. *Countersigning Cheques*, p. 599.
- XI. *Discharge*, p. 599.
- XII. *Discretion*, p. 599.
- XIII. *Examination*, p. 599.
- XIV. *Fees*, p. 600.
- XV. *Meetings*, p. 601.
- XVI. *Newspaper*, p. 601.
- XVII. *Oath*, p. 601.
- XVIII. *Opinion*, p. 601.
- XIX. *Order*, p. 601.
- XX. *Powers*, p. 602.

XXI. *Proof of Debt*, p. 602.

XXII. *Protection of Bankrupt*, p. 602.

XXIII. *Removal*, p. 603.

XXIV. *Supervision*, p. 603.

XXV. *Surrender of Bankrupt*, p. 603.

XXVI. *Voting*, p. 603

## I. *Amendment.*

### 1. *Conditions of Allowance.*

The Register may report provisionally as to the conditions on which the amendments should be allowed.—*John Morganthal*, vol. 1, p. 402.

## II. *Assignee.*

### 2. *Appointment of*

Where no creditors attend on the day fixed for the first meeting, the Register may appoint an assignee under the provisions of Section 13.—*In re Mortimer C. Cogswell*, vol. 1, p. 62.

### 3. *Disapproval—Report of*

Where it appears that an assignee has been chosen by the influence of the bankrupt, the court will feel bound to withhold its approval; and wherever a Register is satisfied that reasons exist why an assignee chosen or appointed should not be approved by the judge, it is his duty to state such reasons fully, in submitting the question of such approval to the judge.—*In re Augustus A. Bliss*, vol. 1, p. 78.

### 4. *Attempt of, to Influence Choice of Assignee.*

Any attempt of a Register to influence the choice of an assignee is unauthorized and improper. Proof of a claim may be postponed until after choice of an assignee.—*In re J. Ogden Smith*, vol. 1, p. 243.

### 5. *Where Creditors Fail to Choose.*

There is no such thing known to the law as an informal vote. Where a vote by creditors at a first meeting results in no choice of an assignee, it is the duty of the Register to inform the creditors that the choice devolves on the judge, unless there be no opposing interest. An appointment of an assignee by the Register, although no objection was made at the time adjudged irregular, and appointment annulled.—*In re Pearson*, vol. 2, p. 477.

**6. May Appoint when no Opposing Interest.**

As the Register can appoint only where there is no opposing interest, no creditor can change his vote after the meeting has adjourned, and thereby cause a failure to elect. If a mistake occurs, or the creditor has good cause to object to the choice made, he can make his objection to the judge, before whom the whole subject will be heard and determined. Where the judge refuses to approve the appointment of the assignee elected by the creditors, he may, under Section 13, clause four, order a new election by the creditors. The fifth clause of Section 18, applies to cases where the assignee has been removed, or has resigned, and not to cases where the judge disapproves the action of the creditors.— *In re Scheiffer & Garrett*, vol. 2, p. 591.

**7. Disapproval of Assignee.**

Where counsel representing certain creditors objected to the votes being received for choice of assignee, from certain other creditors, alleging the same to have been procured by collusion of the bankrupt, and offering testimony in support, the Register declined to hear such proof.

*Held*, The action of the Register was right. In submitting the question of the assignee's approval, the Register, by standing rule, must report, for the information of the court, whatever reasons exist and are known to him against such approval.— *In re George W. Noble*, vol. 3, p. 97.

**8. Motion to set Aside Appointment of Assignee.**

A motion on the part of the bankrupt, to set aside the appointment of assignee, can only be entertained by the district judge upon notice, and not by the Register.— *In re Edward S. Stokes*, vol. 1, p. 489.

**III. Assignment.****9. Property in Dispute.**

A Register has the right to convey the estate to the assignee when there is "no opposing interest," although the title to the property is in dispute.— *In re Wylie*, vol. 2, p. 187.

**IV. Attorney.****10. Authority to Appear.**

The Register cannot inquire into the authority of an attorney or counsellor of

the Circuit or District Court, to appear for creditors.— *In re William D. Hill*, vol. 1, p. 16.

**V. Auditing.****11. Requiring Assignee to give Information.**

The Register in charge has power to order the assignee to furnish him with all necessary information as to funds in his hands.— *In re Clark & Bininger*, vol. 6, p. 194.

**12. Accounts Filed at Second Meeting.**

A Register has power so to audit and pass the accounts of an assignee at a second meeting called only under the 27th Section of the Act, as to bind the creditors, even though no notice had been given under the 28th Section or otherwise, that such accounting would be had, and though such accounts be not filed until the hour of the meeting. If the creditors omit to attend such meeting, or fail to object to such accounts, it is the duty of the Register to direct their payment. The provision in Section 28, for auditing and passing the accounts of the assignee at the meeting for the final dividend, cannot be regarded as in any manner implying that such accounts of the assignee as are presented at the second general meeting of creditors shall not then be audited and passed by the Register.— *In re Clark & Bininger*, vol. 6, p. 197.

**13. After Notice to Creditors.**

When the Register gave notice of the second meeting of creditors called only under the 27th Section of the Act, that the accounts of the assignee filed at such meeting would not be audited or passed at such meeting, as no notice of such auditing or passing had been given to creditors, and as the amounts had not been on file ten days, as required by the 28th Section of the Act,

*Held*, On an application by the assignee to the district judge to compel the Register to order the payment of such accounts, that the Register was right in refusing to make such order.— *In re Clark & Bininger*, vol. 6, p. 204.

**VI. Bankrupt.****14. Deprived of Custody of Funds.**

A Register may order bankrupts to hand over to his custodian funds in their hands. Disobedience to such an order adjudged a contempt, for which an attachment was is-



sued from the court.—*In re F. & A. Speyer*, vol. 6, p. 255.

#### 15. Execution of Deed.

Application to require bankrupt to execute deeds in cases where, under advice of counsel, the bankrupt refuses to execute must be made to the court, not to the Register, and in such cases the Register has no power to pass thereon.—*A. B.*, vol. 3, p. 244.

### VII. Books and Papers.

#### 16. Open to Inspection.

The books and papers in a Register's office should be as open to inspection at the local seat of justice, as those in the office of the clerk of a court.—*Sherwood*, vol. 1, p. 344.

### VIII. Certificate of Conformity.

#### 17. Not Conclusive.

The certificate of the Register to the sufficiency of the inventory of the debtor's debt, is not so conclusive as to prevent inquiry when the question is raised by a proper party at the proper time, and in the proper manner.—*In re William D. Hill*, vol. 1, p. 16.

#### 18. On Presentation of Oath of Bankrupt.

The Register is to certify conformity or non conformity, on presentation to him, by the bankrupt, of the oath required by Section 29, and if there be specifications in opposition to the discharge, the Register may certify conformity except in the particulars covered by the specifications.—*In re Eugene Pulver*, vol. 2, p. 313.

### IX. Certifying Questions.

#### 19. Actual, not Hypothetical Questions.

On questions certified by Register at the first meeting for the decision of the judge,

*Held*, Only actual questions arising and existing on issue of law or fact in proceedings had, and not hypothetical questions, or questions in anticipation or likely to arise, are proper to be certified for decision by the judge. So, too, as to questions on points or matters arising in the course of proceedings, and upon the result of proceedings. Questions stated by consent, must be by parties in a special case upon proceedings actually had.—*In re John Pulver*, vol. 1, p. 46.

#### 20. As to his Charges—on his own Motion.

A question as to charges of a Register in bankruptcy may be raised by an exception, or may, at the request of a party, be certified by the Register. The court will not, in all cases, refuse to entertain such a question upon a certificate, by the Register, of his own motion.—*In re Benjamin Sherwood*, vol. 1, p. 344.

#### 21. Examination and Cross-Examination of Bankrupt.

Bankrupt, being under examination, was asked by creditors and assignee: "Have you acquired any property since you filed your petition, or since you were declared a bankrupt?" Bankrupt objected. Register sustained objection and excluded the question, whereupon creditors and assignee excepted to his decision, and requested that the question so arising be certified to the court for decision. At the conclusion of the examination counsel for bankrupts proposed to cross-examine, to which creditors and assignee objected that he had no such right.

*Held*, The bankrupt is subject to examination and cross-examination, like any other witness, and the question thereof was properly certified for decision as a question of law under Section 4.—*In re Samuel W. Levy & Mark Levy*, vol. 1, p. 136.

#### 22. Declining to, after Decision.

Bankrupt filed his petition to be adjudicated a bankrupt on the 25th of June, 1867, and was so adjudicated on September 12th following. During his examination before the Register by creditors, he testified to receiving \$5,000 about August 25th, 1867, and, being asked what became of it, objected to the question, which objection the Register overruled. The bankrupt requested that the question so raised be adjourned for the decision of the court, and the Register declined. A special case was thereupon made and submitted by the attorneys of the bankrupt and creditors respectively.

*Held*, That the Register was correct in declining to adjourn the question into court as an issue of law.—*In re Charles G. Patterson*, vol. 1, p. 125.



**X. Countersigning Cheques.****23. Judicial, not Ministerial.**

The duty of countersigning cheques, devolved upon the Register by the Act, is a judicial and not a ministerial duty.—*Clark*, vol. 9, p. 67.

**XI. Discharge.****24. Certificate of Conformity pre-requisite.**

Before a discharge can be granted the Register must, after a careful examination, certify that the bankrupt has conformed to all the requirements of the Act, and no discharge will be granted until all the papers are filed with the clerk, as required by General Order 7.—*In re John Bellamy*, vol. 1, p. 96.

**25. Special Order Referring.**

The special order referring a petition for a discharge to the Register, is necessary.—*In re John Bellamy*, vol. 1, p. 118.

**26. Service of Notice.**

The Register, on directing order (Form 51) to issue, shall forthwith transmit to the clerk a list of all proofs of debt furnished to the Register or assignee, containing names, residences, and post-office addresses of creditors, with sufficient particularity to insure proper service of notice (Form 52).—*In re John Bellamy*, vol. 1, p. 118.

**27. Creditor Opposing Bankrupt's Discharge.**

Where a creditor appears and opposes the discharge of a bankrupt before the Register, the Register must make a certificate of his proceedings, stating such opposition, and return the papers into court in like manner as if there were no opposition.—*In re William H. Hughes*, vol. 1, p. 225.

**28. Cannot hear any Questions as to the Allowance.**

Where it appears from testimony elicited on the examination of a bankrupt before a Register, that a creditor was influenced by a pecuniary consideration paid to the creditor's attorney, although a very small one, not to oppose the discharge of the bankrupt, and the proceedings are certified up by the Register to the District Court, with the opinion of the Register that such payment should not deprive the bankrupt of his discharge,

*Held*, That such question is not a proper

one for the Register to certify to the district judge, inasmuch as the Register is forbidden to hear any question as to the allowance of an order of discharge.—*In re Marston*, vol. 1, p. 265.

**29. Idem.**

A Register in bankruptcy has no authority to decide questions arising upon objections properly urged against a bankrupt's discharge. Whether objections are sufficient or insufficient, the Register, must, notwithstanding, proceed with the case.—*In re Puffer*, vol. 2, p. 43.

**30. Must Examine Bankrupt before he is Discharged.**

Before a bankrupt can be discharged he must be examined by the Register upon all matters touching his bankruptcy; the assignee or creditors may appear at such time and examine the bankrupt; should they desire any other time to examine him, the proper way is to petition the court for that purpose. If the application is made directly to the judge instead of through the Register, it is not necessary that such application be sustained by any certificate of the Register as to the propriety of granting such order.—*In re Brandt*, vol. 2, p. 345.

**XII. Discretion.****31. As to Adjournments.**

In questions of postponements and of cases of adjournments before Registers, they must exercise proper legal discretion. Subject to this rule, they have entire legal control of cases before them, and must exercise their best judgment in preventing unnecessary and unreasonable delays.—*In re Hyman*, vol. 2, p. 333.

**XIII. Examination.****32. Cannot Pass on Admissibility of Evidence.**

Where questions were put to bankrupt on his examination touching the acquirement of certain moneys to which bankrupt objected, and the Register overruled his objection,

*Held*, That Register had no power to decide on the validity of objections or on the admissibility of the questions.—*In re Charles G. Patterson*, vol. 1, p. 147.

**33. Pro forma for Purposes of Certificate.**

In the examination of a bankrupt by creditors, the Register will pass upon questions objected to, and formal exceptions being taken, he will, at the close of the testimony, entertain motion to strike out answers or admit excluded questions, and certify the questions to the court.—*Isidor Lyon*, vol. 1, p. 111.

**34. Fee upon Adjournment of Examination.**

Upon return of an order for examination of bankrupt, the attorney for creditor not being ready, the examination was postponed at his request.

*Held*, That a Register is not entitled to a fee of five dollars upon such an adjournment, as for a day's service.—*In re Isaac Clark*, vol. 1, p. 188.

**35. Competency or Materiality of Testimony.**

The Register has no power to decide on the competency, materiality, or relevancy of any question, and has, therefore, no power to exclude or overrule any question.—*Isaac Rosenfield, Jr.*, vol. 1, p. 319.

**36. May allow Bankrupt to Consult Attorney—When.**

A bankrupt cannot consult with his counsel, or with any one, while on the witness stand, as to the way or manner he shall answer questions put to him, except when the Register, in charge of the case, shall, in the exercise of due discretion, see cause therefor.—*In re Curtis Judson*, vol. 1, p. 364.

**37. Criminating Questions.**

A bankrupt on his examination before the Register, may be examined to show that the debt to the examining creditor was fraudulently contracted.

The bankrupt may decline to answer, if by so doing he would criminate himself.

The Register cannot make any binding decision, or compel a witness to answer, if he refuses.—*Koch*, vol. 1, p. 549.

**38. Order for Examination.**

A Register in bankruptcy can allow the order (Form 45) for the examination of the bankrupt under Section 26 of the Bankrupt Act.

A Register in bankruptcy is invested with the powers of the district judge in

all matters of an administrative character arising in a case referred to him under the rules of the court, where the same are uncontested, or not otherwise prohibited by the act of Congress.—*In re Lanier*, vol. 2, p. 154.

**39. Idem.**

A Register has power to fill up a blank order for the examination of the bankrupt, issue the summons, and appoint the day and place for such examination. The Register has no right to summon witnesses for the purpose of eliciting facts that may assist the creditors in preparing their specifications in opposition to the bankrupt's discharge; it is proper, however, to call the bankrupt before him to answer questions touching his bankruptcy. A Register may do anything required to be done by the court within the provision of the Bankrupt Law, unless a controversy shall arise, in which event the question raised before him must be certified to the judge for his decision.—*In re Brant*, vol. 2, p. 215.

**40. Idem.**

The Register has power to make the order, under Section 26 of the Bankrupt Act, requiring the bankrupt or a witness to appear and be examined.—*In re Pioneer Paper Company*, vol. 7, p. 250.

**XIV. Fees.****41. Proof of Debt since Amendment.**

The fee of the Register, for taking an ordinary proof of debt, since the recent amendment went into operation, is one dollar and eighty-seven and a-half cents.

For examining and filing a proof of debt taken before any other officer, fifty cents is the proper fee to be charged. *Anon.*, vol. 10, p. 141.

**42. Custody of Property.**

Bankrupts in the dry goods trade surrendered all their property to a Register in bankruptcy, who had control and custody for twenty-five days prior to the appointment of a regular assignee, and under whom sales were made for cash over the counter of bankrupts' store, and the proceeds safely kept and accounted for.

*Held*, That the Register might be allowed five dollars per day, and a commission of two hundred and fifty dollars for the custody of the money, by way of com-

pensation, payable out of the assets.—*In re Loder Brothers*, vol. 2, p. 517.

#### 43. In Private Sittings.

It seems that the Register may, besides the charges for attendance, etc., specified in the 47th Section of the Act of Congress, and in General Order No. 80, make reasonable charges for his additional services in the business of the private sittings preceding the warrant, the business of the first public meeting of creditors or its adjourned sittings, and the business of another public meeting after the application for a discharge.—*Sherwood*, vol. 1, p. 844.

#### 44. Not under Special Order.

Services of the Register for any question of discharge in any one of the counties for which he has been appointed, whether he resides in it or not, are not services under a special order of the court, within the meaning of the 47th Section of the Act.—*Sherwood*, vol. 1, p. 844.

#### 45. Attendance per Diem.

For his mere attendance, exclusive of any additional services, he is not entitled to more than three dollars per day, unless he should be allowed five dollars for the first day on which he may attend under the order of reference when he does not himself appoint the time.—*Sherwood*, vol. 1, p. 844.

### XV. Meetings.

#### 46. Immaterial Defects in Notice.

The exact language contained in the warrant, should be copied by the messenger into the notices to creditors to be served and published, but the Register may disregard all immaterial variance, and omission in the notices of the former residence stated in the warrant held immaterial.—*John Pulver*, vol. 1, p. 46.

#### 47. Third Meeting—not Called Except for Cause.

A third meeting of creditors—not being a final meeting—should not be called except for cause shown, and if the Register be satisfied that no such cause exists, he is justified in refusing to grant the order for such a meeting.—*In re Clark & Bining*, vol. 6, p. 194.

### XVI. Newspaper.

#### 48. Selection for Publication of Notices.

Where papers are designated by rules of

the court in which notices are to be published, the Register cannot substitute other papers therefor in the district, but he may, in the exercise of judicial discretion, select other newspapers without the district, in which notices shall be published.—*In re Jesse H. Robinson*, vol. 1, p. 8.

### XVII. Oath.

#### 49. Of Allegiance.

The oath of allegiance annexed to the debtor's petition may be taken before a Register.—*In re Andrew J. Walker*, vol. 1, p. 335.

#### 50. In Cases not Before Him.

The Register has power to take affidavits and depositions, in cases not before him, at any time after the petition is filed.—*In re Edwin B. Dean and Thomas F. Garrett*, vol. 2, p. 89.

#### 51. By Consent—in Particular Case.

Although a Register may have no authority to take a particular deposition, he has full authority to administer oaths, and when, by the assent of parties, he has taken such a deposition to be used in evidence in a cause, the same becomes a sworn statement made in the case to be used as evidence therein, to which the party causing the deposition to be so taken cannot object.—*Wilson v. City Bank of St. Paul*, vol. 5, p. 270.

### XVIII. Opinion.

#### 52. Provisionally.

A Register holding provisionally a court of bankruptcy should declare his opinion upon questions which may arise during the course of the proceedings. If exceptions be taken to the Register's provisional decision, he should certify the question to the court.—*In re Reakirt*, vol. 7, p. 329.

### XIX. Order.

#### 53. To show Cause—by Special Direction.

In uncontested cases the order to show cause may be made by the Register, if the judge so directs specially or generally.—*In re Bellamy*, vol. 1, p. 64.

#### 54. Idem.

In an uncontested case, the proper Register, by special order of the court, may direct the making of the order to show cause in Form 51, and make it returnable before

the court at such Register's office.—*In re John Bellamy*, vol. 1, p. 96.

### XX. Powers.

#### 55. Of District Court in Uncontested Matters.

It was the intention of Congress to make the Registers' acts the acts of the courts, and to vest them with all the powers of the District Courts in relation to all matters about which there is no contest. They are also to give their opinions upon all questions, points, and matters arising before them upon which there is a contest, which opinions will be final unless the parties litigant request the question, point, or matter contested to be certified to the district judge.—*In re Henry Gettleston*, vol. 1, p. 604.

### XXI. Proof of Debt.

#### 56. Before First Meeting.

That the Register was not bound to notify the bankrupt, or attorney, of the filing by the creditors of their proof of debt before allowing and entering the same, prior to the first meeting, but the court has full control of the debts and proofs, and the bankrupt has his right to object to the validity thereof at the first meeting of creditors.—*Patterson*, vol. 1, p. 101.

#### 57. Sufficiency.

A Register has power to pass upon the satisfactory or unsatisfactory proof of debt, but where a question of law or fact is raised in respect thereof, the same must be certified for the decision of the judge under Section 4.—*In re Henry Bogert and Robert D. Evans*, vol. 2, p. 435.

#### 58. Withdrawal.

The Register cannot order or permit the withdrawal of a proof of debt after he has passed the same, allowed, certified, and transmitted it to the assignees.—*In re McIntosh*, vol. 2, p. 506.

#### 59. Expunging.

An order upon a creditor who has proved his debt, to show cause why the proof of the debt should not vacated be and the record cancelled, should be made by the court and not by the Register.—*Comstock v. Wheeler*, vol. 2, p. 561.

#### 60. May Postpone.

Where counsel, representing certain cred-

itors, objected to the votes of other creditors being received for choice of assignee, on the ground that one had accepted a preference, and the claims of others had been purchased with the bankrupt's money, opposing counsel offered contrary proof which the Register declined to hear, an injunction order having been produced by first counsel.

*Held*, That the Register was right. The Register has power to postpone proof of a claim until an assignee is chosen, if a case is made out for such postponement within Rule 6 of this court; but he has no power to institute or set on foot the inquiry provided for by the last clause of Section 22 of the Act.—*Herrman & Herrman*, vol. 3, p. 618.

#### 61. Idem.

A Register has power to postpone the proof of a claim where there are doubts as to its validity in view of the receipt of a preference contrary to the provisions of the United States Bankrupt Act of 1867.—*Stevens*, vol. 4, p. 367.

#### 62. Idem at First Meeting.

The Register may exercise the authority given the judge, by Section 23 of the Bankrupt Act, to postpone the proof of a debt offered at the first meeting, if he finds, upon the evidence, that its validity is doubtful.

The practice in this district, and in several others, for the Register to exercise this discretion, is sound, though he has no power either to admit or postpone a contested claim which he considers valid, but must report it to the court if the vote upon it could affect the choice of assignee.—*In re Bartusch*, vol. 9, p. 478.

#### 63. Receiving from another Register.

Where depositions for proof of debt had been transmitted from one to another Register,

*Held*, A Register is not bound to receive and file a deposition for proof of debt taken and certified before another Register.—*Loder*, vol. 3, p. 655.

### XXII. Protection of Bankrupt.

#### 64. From Oppressive Examination.

It is the duty of the Register to protect the bankrupt from annoyance, oppression; and mere delay, while at the same time full and fair opportunity is to be allowed to

the creditors to inquire into the matters specified in the 26th Section of said Act.—*In re Julius L. Adams*, vol. 2, p. 272.

XXIII. *Removal.*65. **Habitually Negligent.**

Registers in bankruptcy, when habitually careless and negligent, should be removed.

The practice of signing and furnishing blank certificates by Registers is severely condemned.—*In re Jaycox & Green*, vol. 7, p. 803.

XXIV. *Supervision.*66. **And Care of Case.**

A Register is charged with the general supervision and care of a case, irrespective of motions for amendment, or any other action on the part of creditors, assignees, or bankrupts.—*In re Freeman Orne*, vol. 1, p. 79.

XXV. *Surrender of Bankrupt.*67. **Required to Receive.**

A Register is authorized and required, upon the request of a voluntary bankrupt, to receive a surrender of his property and safely keep it until turned over to an assignee. General Order 13 applies only to involuntary cases.—*In re Abraham E. Hasbrouck*, vol. 1, p. 75.

XXVI. *Voting.*68. **Pending Motion to Expunge.**

The Register having no power to expunge such proofs or to reject the claims, he cannot refuse to permit the claimants to vote at a second meeting of creditors, nor can he exclude them from a dividend.—*In re Jaycox & Green*, vol. 7, p. 303.

## REGULARITY OF PROCEEDINGS.

See BANKRUPT,  
DISCHARGE,  
REGISTER.

**Pre-requisite to Discharge.**

Under Section 32, all the requirements of the Act, from the commencement of the proceedings to the end, must be conformed to as pre-requisites to the granting of a discharge, and the bankrupt is bound to see to the regularity of such proceedings.—*John Bellamy*, vol. 1, p. 96.

## RE-HEARING.

See APPEAL  
COURTS,  
PRACTICE,  
REVIEW.

**To Extend Time for Appeal.**

A court should not do indirectly what it has no power to do directly, therefore when a petition has been dismissed in the United States Circuit Court, the parties considering themselves aggrieved by such decision cannot apply to the United States District Court for a re-hearing of the original decree, that they may, on an adverse decision being re-entered, again have the right to appeal to the Circuit Court, as this would be an attempt to extend the time fixed by the statute within which an appeal can be allowed.—*In re Troy Woolen Company*, vol. 6, p. 16.

## RELATIVE OF BANKRUPT.

See ASSIGNEE.

1. **Objectionable as Assignee.**

An objection to the appointment of assignee, for the reason that he is related to the bankrupt, is well taken.—*Powell*, vol. 2, p. 45.

2. **On Committee of Creditors.**

Relationship in the ninth or less degree on the part of a proposed trustee, to a bankrupt or to a creditor, even the largest in amount, of a bankrupt, or to a proposed member of the committee, or on the part of a proposed member of the committee, to such creditor, or to the bankrupt, cannot be regarded as a disqualification. Other facts may concur with relationship which would make confirmation improper.—*Zinn et al.*, vol. 4, p. 436.

## REMEDY.

See EQUITY,  
PRACTICE.

1. **Complete at Law—Equity Refuses.**

Where the remedy at law is plain, adequate, and complete, without any reasonable doubt, equity will decline the jurisdiction, provided the objection is taken by demurrer, or is claimed in the answer.—*Charles M. Garrison, Assignee, v. John J. Markham, in Equity*, vol. 7, p. 246.



## 2. Contra—If Objection not taken in First Instance.

A court of equity will not refuse to take jurisdiction of a cause merely on the ground that complainant has a complete remedy at law where, as in this case, the parties have submitted their rights to the jurisdiction of the court without objection, especially where proofs have been taken and a hearing upon the merits has been entered upon.—*H. Post, Assignee, v. S. I. Corbin*, vol. 5, p. 12.

## 3. May be Changed by the State.

The legal remedies for the enforcement of a contract which belong to it at the time and place where it is made, are a part of its obligation; a State may change them, provided the change involves no impairment of a substantial right.—*John McK. Gunn v. Charles F. Barry, Sheriff, etc.*, vol. 8, p. 1.

## 4. May be Destroyed by Congress.

Congress has power to destroy any lien upon property of the bankrupt, whether created by *contract*, by *statute*, or by *judgment*. The power given it to destroy the principal, *the contract a fortiori*, includes the power to destroy all the *incidents* or *remedies* for the enforcement of the contract.—*In re Jordan*, vol. 8, p. 180.

## 5. Election.

The levy by a creditor of an execution on sufficient property to satisfy his debt does not estop him from moving to have his debtor adjudged bankrupt, but the filing of the petition in bankruptcy will be held a waiver of the levy, and an election by the creditor to proceed in the Bankrupt Court.—*Sheehan*, vol. 8, p. 345.

## 6. When Exclusive.

The fact that an Act of Congress confers a new right, and at the same time provides an adequate remedy for its enforcement, is no ground for considering the remedy thereby conferred to be intended to be exclusive. This inference is only to be drawn when a new penalty is imposed, the rule of construction in the two cases being directly opposite—in the first, liberal, in the last, strict.—*Cook v. Waters, Whipple et al.*, vol. 9, p. 155.

## 7. If Discharge is Refused.

Proving a debt in bankruptcy does not of itself operate as an absolute extinguish-

ment or satisfaction of the debt. If the bankrupt's discharge is refused, the creditor who has proved his debt is remitted to his former rights and remedies.—*Dinger v. Becker*, vol. 9, p. 508.

## RENT.

See LANDLORD.

PROVABLE DEBT.

### 1. Pending Sale by Assignee.

Where the assignee held a store for the purpose of keeping and storing the goods of the bankrupt until they could be sold,

*Held*, That the rent for such premises must be paid by the assignee and charged as part of his expenses.—*In re Fred. B. Walton et al.*, vol. 1, p. 557.

### 2. Distress for against Assignee.

Whether under the present Bankrupt Law of the United States, goods of the estate in the hands of the assignee are distrainable for rent?—*In re Benjamin Appold*, vol. 1, p. 621.

### 3. Incurring by Assignee.

Though rent, as such, may not accrue during the proceedings in bankruptcy, an equal charge for storage may, for a certain period, under certain circumstances, be incurred by the assignee.—*Appold*, vol. 1, p. 621.

### 4. Assignee Liability where Distress Prevented.

Under the equity of any laws of the respective States which, like the English statute, 8 Anne, c. 14, entitle a landlord to payment of rent accrued, not exceeding one year's, out of the proceeds of goods sold under an execution, the landlord, who is prevented from distraining, may demand such an amount of rent from the assignee in bankruptcy. — *Appold*, vol. 1, p. 621.

### 5. Contract to Deliver Property for Payment.

A debtor promised in writing to deliver 6,400 pounds cotton to pay for rent, and for mules, corn, and fodder bought from landlord. Debtor assigned cotton and farm-stock to his brother to pay just debts, with his own, and his brother's knowledge of his insolvency, and subsequently was adjudged voluntary bankrupt.

*Held*, Landlord could not distrain under



the statutes of Mississippi, and had no lien on cotton raised as against general creditors.

The debtor's transfer to his brother was an act of bankruptcy.—*Brock v. Terrell*, vol. 2, p. 643.

#### 6. Assignee Responsible for Rent of Store for the Time Occupied.

Bankrupt held his store on a verbal lease, terminating May 1, 1869, for \$1,600 per annum and taxes. On December 26th, 1868, he surrendered his stock of goods to the Register, and delivered to him the key of his store. The Register turned the same over to the assignee, March 2d, 1869, and on the 25th of March the goods therein were sold by the assignee's order. On the 1st of February, the landlord executed another lease to a stove company. Toward the end of April applications were made to the assignee for the key, and he immediately delivered it up. The store had been unoccupied by the assignee after the 1st of April, and he was ignorant of the owner and of the second lease. The landlord claimed rent from December 26, 1868, to February 1, 1869, and the stove company claimed rent at the rate of two thousand dollars per annum from February 1, 1869, to May 1, 1869.

*Held*, The assignee should only pay rent at the rate of \$1,600 per annum to April 1, 1869.—*Merrifield*, vol. 3, p. 98.

#### 7. Lessor has Preferred Claim for.

Bankrupts before proceedings in bankruptcy rented storehouse under written lease; assignees retained possession with bankrupt's goods therein, but finally surrendered the premises to the lessor.

*Held*, The lessor had a preferred claim for the rent. He had a lien which he could have enforced by distress at the term of commencement of proceedings in bankruptcy, and upon the facts stated had not waived it.—*Walker v. Barton*, vol. 3, p. 265.

#### 8. Right to Distrain.

Under the English law, proceedings in bankruptcy did not interfere with the right of the landlord to distrain for rent, provided the property remained on the demised premises.

Under the Bankrupt Law of 1841, the

right of the landlord to distrain, in those States where such right existed, was not lost.

*Held*, That the right of the landlord to distrain for rent may vary in different States under the Bankrupt Law, because the right of the landlord to distrain is not the same under the laws of all the States.

That under the statute of Illinois the distress-warrant is in the nature of an attachment upon *meane* process, and the certificate given by the court after the case is heard in the nature of an execution.

In Illinois, when no distress-warrant has been issued prior to the filing of the petition in bankruptcy, the landlord has no priority or preference over the general creditors, and must prove his debt like any other general creditor of the bankrupt.—*Joslyne et al.*, vol. 3, p. 473.

#### 9. Lien for under State Law.

Where, under State laws, the landlord has a lien for rent, the same will be upheld and respected in a Bankruptcy Court, and the assignee must take title subject thereto. The landlord will be entitled to prove his claim in bankruptcy for the unexpired term of a lease beyond one year, even though he has been preferred under a State law for his rent up to the end of the year.—*Charles H. Wynne*, vol. 4, p. 23.

#### 10. Lease Accepted by Assignee.

If the assignee in bankruptcy elects to accept a lease held by the bankrupt he renders himself liable on behalf of the estate, for rent from date of the petition.—*In re Laurie, Blood & Hammond*, vol. 4, p. 32.

#### 11. Lien for in South Carolina.

A landlord has a lien in the State of South Carolina on the personal property of the tenant which is good for one year as against execution and other creditors. Under the statute of Anne, a landlord has a secured lien for his rent in the State of South Carolina, and that law is still in force, not having been repealed by the military order of General Sickles. An assignee in bankruptcy is bound to respect the landlord's lien for rent.—*In re Trim, ex parte Marshal; Purcell et al. v. Wagner et al.*, vol. 5, p. 23.

**12. Application of Landlord for Payment.**

Upon the application of a landlord for an allowance for rent for the time during which his premises were occupied by the goods of the bankrupt while in the hands of the marshal, the court held that the landlord ought to have applied to the court for possession immediately after the marshal took control, and that it would have ordered a removal of the goods and furniture therefrom and the premises vacated. If the landlord had an opportunity to rent the premises, he should have so represented to the court. Application for payment of rent refused.—*In re McGrath & Hunt*, vol. 5, p. 254.

**13. Payment of in Full by Insolvent.**

The payment of rent in full by an insolvent corporation, in order to prevent the forfeiture of a valuable lease is a technical act of bankruptcy.—*In re Merchants' Insurance Co.*, vol. 6, p. 43.

**14. Landlord's Right to Expires when.**

A landlord's right to rent, against the bankrupt's estate, expires on the day of adjudication. If the assignee occupy the premises after that day, he, and not the estate, is liable for the rent; when, however, his occupancy is for the benefit of the estate, he will be credited with the rent he is obliged to pay.—*In re Webb & Co.*, vol. 6, p. 302.

**15. Seizure for under Pennsylvania Law.**

Unless there is a seizure for rent as provided for in the Pennsylvania statute, the Bankrupt Act of 1867 gives the landlord no lien or preference over the bankrupt's other creditors. Where premises are occupied by the assignee or trustee after adjudication, rent should be paid for the time they are so occupied as part of the administration of the estate.—*In re Butler*, vol. 6, p. 501.

**16. Assignee not Accepting Lease.**

It is well settled that until an assignee in bankruptcy elects to accept a lease as assignee, he does not become liable for rent accruing after the adjudication, hence, when an assignee occupies the leased premises independently of the lease and pays for such occupation, this occupation is not evidence of such an election.—*In re Ten Eyck & Choate*, vol. 7, p. 26.

**17. Sufficient Goods Remaining on Premises.**

When sufficient goods remain on the premises occupied by the bankrupt to satisfy the rent on distress, the assignee should pay the full amount due up to the time of his surrender to the landlord.—*Longstrech, Assignee, v. Pennock et al.*, vol. 7, p. 499.

**18. Failure to Secure Lien for.**

A landlord claimed a preference for rent of a plantation leased by him to the bankrupt, upon which plantation it was alleged there was remaining, at the time of the adjudication of bankruptcy, property more than sufficient to pay the rent due, which property was sold by the assignee.

*Held*, That the petitioner having failed to take the necessary steps to secure his lien, on the property for the rent due, had no prior claim in the fund in the hands of the assignee, and that he must share *pro rata* with the general creditors.—*Austin v. O'Rielly, Assignee*, vol. 8, p. 129.

**19. Accruing after Filing of Petition.**

A claim for rent which accrued after the filing of the petition in bankruptcy, under a lease executed prior to such filing, is not provable in bankruptcy.—*May & Merwin*, vol. 9, p. 419.

**20. Lien.**

A landlord petitioned to have his rent paid in full out of the proceeds of certain property of the bankrupt, on which he claimed a lien by the peculiar terms of his lease.

*Held*, That he had no lien because the lease was not recorded as required by the statute of Michigan, and petition must be dismissed.—*In re Dyke & Marr*, vol. 9, p. 430.

**21. Division between Joint Lessees.**

Where two premises are let jointly to A and B, and A agrees with B to divide the premises, and to each pay a proportionate part of the rent, A can only retain exclusive possession of the part so set apart to him so long as he complies with the condition of the separation, the payment of a proportionate part of the rent.

Failure by A to pay his proportional part, while it will deprive him as against B of the *exclusive* possession of the part set apart to him, yet will not authorize B to entirely exclude him therefrom.—*Hotchkiss*, vol. 9, p. 488.

**22. Where Bankrupt has Received in Advance of Sub-Tenant.**

Where the bankrupt has received in advance from a sub-tenant rent for premises rented, in such case the landlord may prove against the bankrupt's estate for so much of the period subsequent to his bankruptcy as he has received rent, or a gross compensation in lieu thereof.—*In re John Clancy*, vol. 10, p. 215.

**23. Property Sold by Assignee without Order of Court.**

Where property is sold by an assignee in bankruptcy without an order of the court, the purchaser will be entitled to the rents and profits of the property from the day of sale, and not from the day of confirmation of the sale by the court.—*Hall v. Scovel*, vol. 10, p. 295.

**24. Note given to Bankrupt for Rent after his Bankruptcy.**

The maker of a negotiable note given to a bankrupt after his bankruptcy, for the rent of property belonging to the assignee in bankruptcy, will not be allowed to set up this defense against a purchaser in good faith before maturity.—*Maxwell v. McCune*, vol. 10, p. 307.

**25. Assignee Receiving Rent of Mortgaged Property—Distribution of.**

Where an assignee in bankruptcy receives the rents of mortgaged property, it must be distributed among the general creditors of the bankrupt. If the mortgagee desires it to be applied specifically to his lien, he must not only show the insufficiency of his security without the permanency of the rents and profits, but he must also intercept the rent before it can reach the assignee.

Where a mortgagee completes his foreclosure without intercepting the rents, he cannot afterwards, on finding the property insufficient, have the rents applied; whatever rights to intercept the rents he may have had ceased with the completion of the foreclosure.—*William Foster v. Estate of James F. Rhodes, a bankrupt*, vol. 10, p. 523.

REPRESENTATION.

See ARREST,  
CONCEALMENT,  
FRAUD.

**1. In Cases of Compositions.**

A debtor cannot be allowed to have the benefit of a composition with his creditors which was confessedly procured by the false representations of his agent, upon the ground that the agent was ignorant of the truth and made the representations in good faith.—*Elfelt et al. v. Snow et al.*, vol. 6, p. 57.

**2. Arrest for Deceit.**

Where a bankrupt is held under arrest upon State process in an action of tort, in the nature of deceit, it being alleged in the declaration that he obtained possession of the plaintiff's goods under color of a contract, by means of false and fraudulent representations, the United States District Court has no power to discharge the bankrupt upon a petition for a writ of *habeas corpus*.—*In re Devoe*, vol. 2, p. 27.

**3. In Avoidance of Stock Liability.**

It is too late for a stockholder, after a stock company has become insolvent, to avoid his liability on the ground that false representations were made to him that no assessment could be made on his stock.—*Upton, etc., v. Hansbrough*, vol. 10, p. 370.

RESIDENCE.

See ADJUDICATION,  
ALIENS,  
ASSIGNEE,  
BANKRUPT.

**1. Of Creditors Unknown.**

Where residences of creditors are stated in the schedule to be unknown, proof of due inquiry to ascertain the same must be produced by the bankrupt.—*In re John Pulver*, vol. 1, p. 46.

The term "residence" refers to the abode of the creditor, whose post-office address should be stated also in the schedules. Personal service may be ordered at the former, or service by mail at the latter. The statement of residence must be such as will insure notice by mail or service in person.—*Ibid.*

Where the warrant stated present residences as unknown, yet stated former residences of creditors, and the marshal returned notices mailed to such creditors, residences unknown,

*Held*, Such notice was good.—*Ibid.*

**2. In Different Districts.**

A petition in bankruptcy filed in the Southern District against a debtor who resides and carries on business in the Northern District of New York, will be dismissed for want of jurisdiction.—*In re James M. Palmer*, vol. 1, p. 218.

**3. Non-Resident.**

A petition was filed by two partners, one of whom neither resided nor carried on business in the district where the petition was filed.

*Held*, That such partner must file his petition where he resided.—*Francis T. & William C. Prankard*, vol. 1, p. 297.

**4. Original Domicile—Revived When.**

Where a bankrupt born in Boston became domiciled in California, but left that State with no intention of returning, and, after staying without the United States several months, returned to Boston, and in less than two months thereafter filed his petition in bankruptcy, the act of leaving California with no intention of returning, at once revived the domicile of origin; and a petition filed in this district cannot be vacated for want of jurisdiction, notwithstanding that the bankrupt has not resided within the district for the greater part of the six months next preceding the filing of the petition.—*In re William S. Walker, ex parte J. S. Wiggin*, vol. 1, p. 386.

**5. Clerk only in District.**

One M., formerly in business for himself in Chicago, had been employed a year and over as a bookkeeper in New York city, and lived with his father at Elizabeth, New Jersey.

*Held*, On a voluntary petition to be declared a bankrupt in Southern District of New York, that that court had no jurisdiction.—*In re Wm. H. Magie*, vol. 1, p. 522.

**6. Clerking with Successors After Twenty Years.**

Where petitioner in bankruptcy had carried on business and resided in New York for twenty years prior to June, 1866, and removed to New Jersey that year, but was still engaged as a clerk with his successors in business,

*Held*, That his petition was properly filed in the District Court for the Southern District of New York.—*In re William K. Belcher*, vol. 1, p. 666.

**7. Proof of Debts by Resident Creditors.**

Debts due by the bankrupt to resident creditors must be proved before one of the Registers of the court of the home district.—*Haley*, vol. 2, p. 36.

**8. Idem.**

A creditor residing in the judicial district where proceedings in bankruptcy are pending, must prove his claim before the Register of that district.—*Strauss*, vol. 2, p. 48.

**9. Carrying on Business.**

Where a bankrupt had been a member of a manufacturing firm in New Jersey, which failed and stopped business, and while continuing to reside in New Jersey, had an office in New York, where he received and wrote letters, and was settling up the business of the firm,

*Held*, That he was not carrying on business in New York, within the meaning of the statute, and discharge must be refused for want of jurisdiction.—*In re William H. Little* vol. 2, p. 294.

**10. Place of Business within Judicial District.**

A person residing without, but having a fixed place of daily business within the judicial district, will be appointed assignee in a proper case.—*In re Loder et al.*, vol. 2, p. 515.

**11. Non-resident Creditor after Proof of Debt is.**

A creditor residing in Boston proved his debt against the bankrupt's estate, and an order was made that he appear before the Register, to be examined touching his debt; failing to appear in obedience to the order, a motion was made to attach him.

*Held*, That when a creditor has proved his debt he is subject to the jurisdiction of the court, irrespective of his place of residence.—*Kyler*, vol. 2, p. 650.

**12. Opposing Discharge.**

Neither the actual nor alleged residence or place of business of the bankrupt can be directly made the ground of opposition to his discharge.—*Burk*, vol. 3, p. 296.

**13. Of an Alien.**

An alien, resident within the United States, need not have resided within the district in which application for adjudica-

tion of bankruptcy is made for a period of six months.—*Goodfellow*, vol. 3, p. 452.

**14. Jurisdictional Prerequisite.**

Where it appeared, even after an adjudication of involuntary bankruptcy (although with consent of debtors), that the bankrupts had a notorious place of business in another district up to within six weeks prior to the filing of a petition of bankruptcy against them in the district in which the adjudication was made,

*Held*, That the court could not entertain a voluntary petition presented by the bankrupts for adjudication, owing to such residence and place of business. That the fact that in one case the adjudication is demanded by a creditor, in the other asked for by the bankrupt, ought not reasonably to affect the determination of jurisdiction.—*Fogerty & Gerity*, vol. 4, p. 451.

**15. Not Synonymous with "Domicile."**

The debtor, being a resident of St. Louis with his family, bought a stock of goods in Montana in July, 1869; went to Montana in August, 1869, leaving his family in St. Louis; remained in Montana, except a few weeks, when on a business trip to St. Louis, until June, 1870; a petition in bankruptcy was filed against him in the Eastern District of Missouri, July 8th, 1870.

*Held*, That Montana was his place of residence, within the meaning of the Bankrupt Act, during the six months preceding the filing of the petition; the word "residence" in Section 11 not being synonymous with the word "domicile."—*In re Watson*, vol. 4, p. 613.

**16. Discharge.**

A discharge will be refused for want of jurisdiction where the testimony shows that the bankrupt did not reside, or carry on business within the meaning of the act, in the district where the petition was filed for the six months next immediately preceding the time of filing, or for the longest period during such six months, although he removed to that district more than a month before the commencement of proceedings.—*In re Leighton*, vol. 5, p. 95.

RESTRAINING PROCEEDING.

See STAY OF PROCEEDING.

REVIEW.

See APPEAL,  
COURTS,  
WRIT OF ERROR.

**1. Not Compelled to Elect which Tribunal.**

Bankrupt petitioned United States Circuit Court to review decree of the United States District Court, declaring him bankrupt, and commenced proceedings in State court to enjoin petitioning creditors, who thereupon moved the Circuit Court that he be ordered to elect whether he would further prosecute his petition to review, or his actions in State court, and, unless he elected to discontinue and abandon the latter, that his petition to review be dismissed.

*Held*, The petitioner has a right to prosecute his petition to review if done in due form and without fault therein.—*In the matter of Abraham Bininger and Abraham B. Clark, Bankrupts; John S. Beecher v. Abraham Bininger et al.*, vol. 3, p. 489.

**2. When Appeal or Writ of Error does not Lie.**

The Circuit Court has revisory jurisdiction of all decisions of the District Court, from which an appeal or writ of error under the 8th Section cannot be taken.—*In re Alexander*, vol. 3, p. 33.

**3. Delay in Filing. Jurisdiction of Circuit Court.**

A delay to file a petition for revision in the Circuit Court, from May 12th, 1869, to June 13th, of the same year, is not unreasonable in the absence of any rule upon the subject in that court, unless such delay has operated to the prejudice of the opposite party.

The Circuit Court has jurisdiction of a petition to revise the decision and judgment of the District Court, refusing to grant to a debtor a certificate of discharge from his debts under the Bankrupt Act.

Such a petition should set forth in what the error in the decision or judgment of the District Court consists, and the nature of the error, for the information of the Appellate Court, and as notice to the opposite party.—*Littlefield v. Delaware & Hudson Canal Co.*, vol. 4, p. 257.

**4. When Appeal does not Lie.**

The mode of review by petition, bill, etc.



under Section 2 of the Act, is expressly confined to cases in which no special provision is otherwise made, and does not apply to cases where an appeal may be taken.

Claimants cannot be permitted to treat the petition for a review as such a statement as the statute requires upon an appeal.—*In re Place & Sparkman*, vol. 4, p. 541.

#### 5. By State Insolvent Commissioners.

A petition to review and reverse an adjudication of bankruptcy was filed in the U. S. Circuit Court by commissioners appointed under State law, for the purpose of liquidating the affairs of a bank. The defendants to the petition of review excepted on the ground that the commissioners are not the legal representatives of the bank. The court decided that the petition of review must be dismissed at the cost of the commissioners, and that the judgment whereby the bank was adjudged bankrupt be affirmed, and that the injunction heretofore granted be rescinded and revoked.—*Thornhill et al. v. Bank of Louisiana; Williams et al., v. Bank of Louisiana*, vol. 5, p. 367.

#### 6. Demonstration of Error.

When the revisory jurisdiction of the Circuit Court is invoked over the decision of the District Court upon a question of fact, the burden of proof is on the petitioner for review to show error in the decision, and he must also show that the evidence cannot support the finding.—*In re J. Dow*, vol. 6, p. 10.

#### 7. Equitable Jurisdiction.

The power to review is given the Circuit Court as a court of equity, and on appeal it is not bound to reverse on strictly legal grounds, if satisfied that the facts are correctly found and that no injustice has been done.—*Samson v. Blake et al.*, vol. 6, p. 410.

#### 8. Demurrer to Petition for.

When the petition for review under the rules in the sixth Circuit is demurred to, its statements, like those of any other pleading, will be taken as true and the appeal determined upon its averments. If the facts therein are sufficient, the demurrer will be overruled and the decree below reversed.—*Curran et al. v. Munger et al.*, vol. 6, p. 33.

#### 9. Irregular Application.

An assignee obtained an order of the District Court, requiring certain parties to deliver to him property belonging to said bankrupt. An appeal was taken to the United States Circuit Court. The assignee moved to dismiss the appeal as the proceedings in the District Court were summary, and could only be reviewed by summary petition.

*Held*, That although the appeal might be irregular, the District Court had jurisdiction, and from the evidence was justified in making the decree appealed from.—*Samson, Assignee, v. Blake et al.*, vol. 6, p. 401.

#### 10. Assignment of Error

The neglect to assign any specific error in a petition for review is one that may be cured by amendment, and no delay should happen to the creditors through mere defect in the formal proceedings.—*Samson v. Blake et al.*, vol. 6, p. 410.

#### 11. Class of Cases to which it Extends —Form and Time of Application.

The application for review given by the first paragraph of the 2d Section of the Act, extends to that class of cases wherein the District Court, by Section 1, is given jurisdiction to issue summary orders, and to proceedings of that court, in the ordinary proceedings in bankruptcy, or upon petition therein, where special aid and relief is sought in any matter embraced in that jurisdiction.

The precise form in which this application is to be made is not regulated by statute. The practice of this court is, the party desiring such review must present to this court a petition setting forth: 1. So much of the proceedings in the District Court as is necessary to show the order complained of, the main facts upon which it was based, or the evidence, where the facts are in dispute. 2. Pointing out *specifically* the supposed error or errors, and asking a review and reversal or modification of the order complained of. A general allegation of error in an order, without saying specifically in what the error consists, has been repeatedly held insufficient and will be disregarded.

There is no specific limitation of time within which a review of summary pro-



ceedings may be sought. Such review may be applied for at any time before the supposed erroneous order is carried into execution.—*Casey*, vol. 8, p. 71.

RULES.

**General.**

The United States District Court has no power to make general rules, such power being vested elsewhere by Section 10 of the Bankrupt Act.—*In re Donald A. Kennedy & Angus Mackintosh*, vol. 7, p. 337.

SALE.

See ASSIGNEE,  
COURT,  
ENCUMBERED PROP-  
ERTY,  
SECURITY.

**1. Doubtfulness of Title.**

No equity of the general body of the bankrupt's creditors can be asserted for their common equal benefit, on the mere ground of doubtfulness of his title to the subject of his lien and the danger of consequent sacrifice at a forced sale.—*Ex parte Donaldson*, vol. 1, p. 181.

**2. By Assignee—Manner of Sale.**

The assignee is required, by Section 15 of the Bankrupt Act, to sell all the bankrupt's unincumbered estate, real and personal, which comes to his hands, on such terms as he thinks best for the creditor. General Order 21 regulates the sale as to advertisements and manner of sale.—*In re George E. White & John E. May*, vol. 1, p. 218.

**3. By Assignee free from Incumbrances.**

The United States District Court has judicial power to authorize the sale, by the assignees, of real estate surrendered by bankrupts, free and discharged of all debts secured by mortgage thereon.—*In re R. H. Barrow; Re Loeb, Simon & Co.; Re W. D. Winter*, vol. 1, p. 481.

**4. Proceeds.**

Moneys arising from sale, *pendente lite*, or property attached, represent the property. Moneys arising from sale of household furniture sold under process of attachment, belong to the bankrupt.—*In re Ellis*, vol. 1, p. 555.

**5. Of Securities.**

No permission for creditors to sell securities they hold, conceded to be the property of the bankrupt, should be granted until their right to do so is shown in the manner prescribed by the 22d Section.—*In re Edward Bigelow, David Bigelow & Nathan Kellogg*, vol. 1, p. 632.

**6. By Debtor in Failing Circumstances.**

A debtor in failing circumstances cannot sell and convey his land even for a valuable consideration, by deed, without reservations, and yet secretly reserve to himself the right to possess and occupy it, for even a limited time, for his own benefit. Nor will this rule of law be changed by the fact that the right thus to occupy the property for a limited time is a part of the consideration of the sale, the money part of the consideration being on this account proportionally abated.—*Lukins v. Aird*, vol. 2, p. 81.

**7. Of Stock of Goods.**

A sale of a stock of goods not made in the usual and ordinary course of business of a debtor is *prima facie* evidence of fraud by Section 35 of the statute.—*Dean & Garrett*, vol. 2, p. 89.

**8. Creditor Holding Security must Apply to Court for Leave to Sell.**

A creditor of a bankrupt, holding the security of a deed of trust in the nature of a mortgage, with a power of sale in a third party as trustee, must prove his debt as a creditor holding a security, and obtain the permission of the court to have the security sold. If he direct a sale without this permission, the court, upon application of the assignee, will set aside the sale.

*Quære*: If the trustee sell without the authority of the court, does any title pass to the purchaser?—*In re Davis, Assignee of Bittel et al.*, vol. 2, p. 391.

**9. Fraudulent Sale before Passage of Act.**

An alleged fraudulent sale had been made by a debtor, and action commenced in chancery by certain creditors to have the same declared void; the bankrupt petitioned in bankruptcy, but failed to disclose that he had any interest in the property, and the assignee in bankruptcy was made a party to the proceedings in the State court, which adjudged the sale fraud-

ulent and void, but held attachments to have been dissolved because sued out within four months before bankruptcy proceedings, and that the attached property vested in the assignee in bankruptcy, the same opposing discharge in bankruptcy.

*Held*, A fraudulent sale of property by bankrupt, before the passage of the Bankrupt Act, is sufficient of itself to preclude his discharge.—*In re Ernest Huseman*, vol. 2, p. 438.

#### 10. Mortgaged Property Free from Incumbrance.

The District Court in bankruptcy may authorize the assignee to sell mortgaged property discharged of the incumbrances, and the mortgagees will then have their lien transferred to the proceeds of sale.

The power of the court to order such a sale on petition of the assignee does not depend on Section 25 of the Bankrupt Act, and is not limited by the proviso of that Section, but may be exercised, notwithstanding the mortgagee asserts a right of immediate possession of the goods, and intends to bring, or does bring an action for the recovery of possession.

Such a sale ought not to be ordered when the substantial rights of the mortgagee are to be thereby injuriously affected.—*Foster et al. v. Ames et al.*, vol. 2, p. 453.

#### 11. Contemplating Bankruptcy — Good Faith in Vendee.

A sale made by a person contemplating bankruptcy is not *ipso facto* void, but if made without the usual course of trade, or is unusual in the time, or place, or price, or character, or quantity of the goods sold, such facts as against the vendee are held to be *prima facie* evidence of fraud in him.

Sales involving all the elements of fraud, so far as the vendor is concerned, may still stand on account of the good faith of the vendee.

In such case the proper and only remedy for the creditors is to oppose the bankrupt's discharge, as provided in the 29th Section of the Bankrupt Act.

In cases of fraud the court may assume the custody of personal property in the hands of the vendee of the bankrupt, purchased before the vendor is adjudged a bankrupt.

*Held*, In this case, the vendees having purchased in good faith, without knowledge of the bad faith of the vendor, and being able to respond to an adverse final judgment upon the question of title, that the court would not settle the question upon motion.—*In re Josiah D. Hunt*, vol. 2, p. 539.

#### 12. Sheriff Protected in Delivering to Assignee—Fraudulent Sale.

It is a good defence for the sheriff to show, in an action brought against him to recover property seized by virtue of an attachment, that the defendant in the attachment sold the property to the plaintiff, when insolvent, to defraud his creditors, with the plaintiff's knowledge; and that said defendant has since been adjudged a bankrupt, and that the sheriff has delivered the goods to the assignee in bankruptcy. A conveys his property to B when in failing circumstances, for the purpose of defrauding his creditors, and B has knowledge of these facts, under the Bankrupt Law of 1867. If A is afterwards adjudged bankrupt, the sale of the goods to B is void, and the title vests in the assignee in bankruptcy, as soon as he is appointed, and he may sue to recover possession of them.—*Bolander v. Gentry*, vol. 3, p. 655.

#### 13. Incumbered Property.

The Bankruptcy Court has full power to order the sale of incumbered assets in such manner as it chooses to direct.—*Columbian Metal Works*, vol. 3, p. 75.

#### 14. Reasonable Cause.

A sale cannot be declared void, unless the purchaser had reasonable cause to believe the seller to have been insolvent when he made the sale, and reasonable cause means a state of facts which would put a prudent man upon inquiry as to the condition of the persons from whom he purchases.—*White v. Raftery*, vol. 3, p. 221.

#### 15. Assignee Selling Free from Incumbrance.

Assignee may sell incumbered property in his possession without petitioning the court, or without an order of the court, but in so doing he sells subject to lawful incumbrances. He can convey no higher or better interest than he took.—*In re John A. Mebane*, vol. 3, p. 347.

**16. "Usual and Ordinary Course."**

Sale of property by the bankrupt, out of the usual and ordinary course of business, is presumptively fraudulent, but this presumption may be rebutted by evidence *aliunde* to be produced by the vendee.—*Babbitt, Assignee, v. Walbrun & Co.*, vol. 4, p. 121.

**17. Idem.**

Under the 35th Section of the Bankrupt Act, it was held erroneous to instruct the jury "that if a sale of property by the bankrupt was not in the ordinary and usual course of business, it was fraudulent." The instruction should have been, not that such a sale was absolutely fraudulent, but that the fact referred to was *prima facie* evidence that it was fraudulent.—*Babbitt, etc., v. Walbrun & Co.*, vol. 4, p. 121.

**18. Of Stock of Goods.**

Where a stock of goods was sold to a *bona fide* purchaser, and where there is no evidence that the vendor was insolvent at the time of the sale; but it appearing on the trial that the purchaser had previously tried to buy the stock, and that the vendor had refused, but finally sold out because he wished to change his business,

*Held*, That an adjudication would not be made on an involuntary petition, setting up the sale of the stock as the only act of bankruptcy.—*In re Valliquette*, vol. 4, p. 307.

**19. Of Railroad.**

The grantee of the franchises of a corporation to operate a railroad can acquire no greater rights than the corporation itself has by the terms of its charter. The purchaser must take his title subject to all the conditions of the original grant, and subject to all duties and liabilities to the State, the public, and individuals, none of whose rights can be impaired by the transfer. Hence there are no such inherent difficulties in the way of the sale and transfer of the property and franchises of a railroad as would require such a construction of the United States Bankrupt Act of 1867, excluding railroad corporations from the operation of that clause of the Act, a literal construction of which clearly rendered them liable to be dealt with under its provisions.—*Adams v. Boston, Hartford & Erie Railroad Company*, vol. 4, p. 314.

**20. Proceeds of Sale.**

A debtor will not be adjudicated a bankrupt simply because, after selling his property for the purpose of going into a new business enterprise, he does not put the proceeds into a tangible shape to prevent the same being seized on process issued out of a State court.—*Fox v. Eckstein*, vol. 4, p. 378.

**21. Lien Transferred to Fund in Court.**

That under Sections 1 and 20 of the Bankrupt Act the court has the right, through its officers, to take possession of all mortgaged property free of the lien of the mortgage, without first satisfying that lien, but in such case the lien is transferred to the fund in court.—*Kahley et al.*, vol. 4, p. 378.

**22. Terms Discretionary with Court.**

It is a matter of discretion with the court to sell subject to, or free of the liens or incumbrances.—*In re Kahley et al.*, vol. 4, p. 378.

**23. By Marshal. Fixtures.**

A sale by the marshal as messenger, under a special order of the court, prior to the appointment of an assignee, is to be considered as in the nature of a sale made by a provisional assignee.

In a sale so made of the lease, good-will, and fixtures of a grocery store, only such things (or their accessories) as are actually or constructively fastened to the freehold will pass to the purchaser of fixtures.

A purchaser of the fixtures at such a sale may make claim upon the funds in the hands of the assignee for the sale, by the messenger, of such articles as were properly included under the sale of the fixtures and afterwards resold as movables.—*In re Hitchings*, vol. 4, p. 384.

**24. By Bankrupt to Defray Expenses of Bankruptcy.**

A bankrupt may sell property to raise money for the purpose of procuring means to defray his expenses in contemplated bankruptcy proceedings, provided he does not sell at a sacrifice, and that the sum so raised is reasonable in amount.—*Keefer*, vol. 4, p. 389.

**25. By Register. Modifying Injunction against Sale.**

A Register may be appointed by the Bankruptcy Court a special custodian of

property advertised for sale under a mortgage, and be directed to sell the same under General Orders 19 and 21, with authority to make other advertisement than is required by the rules of the court. The order should designate the place where the moneys (proceeds of the sale) shall be deposited, as a separate fund subject to the further order of the court. The Register will be directed to make the deed to the purchaser, and convey title under the order of the court free from certain liens in pursuance to Section 20 of the Act, and the lien of the mortgage will be transferred from the property so sold to the proceeds of the sale.

Where it is thought desirable, in order to obtain a better price for property, an injunction will be so far modified that the sale may take place under a judgment, and the referee may unite in the deed.—*In re Hanna*, vol. 4, p. 411.

#### **26. Not Ordered, unless Property in Possession.**

The United States District Court does not possess the power, under the 25th Section of the present Bankrupt Act, to order in a summary way the sale of an estate, real or personal, although the same is claimed by the assignee, even though the title to the same is in dispute, if it also appears that the estate in question is in the actual possession of a third person holding the same as owner, and claiming absolute title to and dominion over the same as his own property, whether derived from the debtor before he was adjudged bankrupt or from some former owner.—*Knight v. Cheney*, vol. 5, p. 305.

#### **27. Proof against Proceeds by Secured Creditor.**

The Bankrupt Court may order a sale of the bankrupt's property, free and clear of incumbrances, and the secured creditor will then have his remedy only against the fund in court. If the secured creditor fails to prove his debt and proceeds against the fund, he does so at his peril.—*Davis v. Anderson et al.*, vol. 6, p. 145.

#### **28. By Assignee under Order of Court.**

An assignee acting under an order of court directing him to sell the goods of a bankrupt for the highest price he could obtain

above a certain minimum specified, must comply with the order, and if it is made to appear to the court that he has not obtained the highest price offered, the sale will be set aside and the assignee directed to refund the amount received, and hold the sale open for higher offers until a day specified, when it shall be closed for the highest offer in cash received up to that time. Costs and attorney's fees of ten dollars ordered to be paid out of the funds belonging to the estate of the bankrupt.—*In re Ryan & Griffin*, vol. 6, p. 235.

#### **29. Laches in Applying for.**

An assignee in bankruptcy applied to the United States District Court, and obtained an injunction to restrain the sale of property under the decree of foreclosure in a mortgage, after the proceedings had reached a stage where, substantially, all the expenses, except those which would attend the sale of the property, had been incurred. Some time thereafter he applied for leave to dissolve the injunction and sell the property.

*Held*, That the petition must be dismissed, with costs to the assignee, for the reason that he had not applied at the commencement of the foreclosure suit for a stay of proceedings.—*In re H. Brinkman*, vol. 6, p. 541.

#### **30. Consideration Present.**

A. petitioned for the delivery of certain goods, purchased from the bankrupt, in the possession of the assignee. The assignee replied that the goods were transferred to A. by the bankrupt without adequate consideration, and for the purpose of defrauding his creditors.

*Held*, That A. paid a full, fair, and, from the evidence it appeared, adequate consideration for the purchase at the time of the sale in cash, and that the prayer of the petitioner for the return of the property must be granted.—*In re A. Pusey*, vol. 7, p. 45.

#### **31. Cost from Proceeds. Mortgage Premises.**

A mortgagee of real estate of a bankrupt offered to take the mortgaged property in satisfaction of his debt. The assignee in bankruptcy and the court declined the proposition with a hope of realizing a larger amount. The court then ordered the mortgaged property to be sold,

and the mortgage-debt to be paid out of the proceeds, giving the mortgagee a right to bid at the sale. The mortgagee bid in the property at a sum less than the mortgage-debt and interest.

*Held*, That the District Court did not err in requiring the mortgagee to pay the costs and expenses of the sale out of the amount bid.—*In re H. D. Ellerhorst et al.*, vol. 7, p. 49.

### **32. Enforcing Security by Sale with Leave of Court.**

After the commencement of proceedings in bankruptcy, a creditor secured by deed of trust cannot enforce his security by sale, without the permission of the Bankrupt Court, and any sale so made will, upon proper application be set aside.—*Smith, Assignee, v. Kehr et al.*, vol. 7, p. 97.

### **33. To Curtail Business.**

On a bill in equity brought to set aside the sale and transfer of certain stores by the bankrupts,

*Held*, That, from the evidence, it appeared that the stores were sold at a fair price, before insolvency, for the purpose of curtailing the business of the bankrupts, and hence the transaction cannot be impeached for fraud. Bill dismissed with costs.—*Sedgwick, Assignee, v. Wormser*, vol. 7, p. 186.

### **34. By Insolvent is not necessarily Fraudulent.**

The Bankrupt Law does not recognize every sale of property made by a person in embarrassed or failing circumstances as necessarily a fraud on the Act, but only such transfers made for a fraudulent object. Hence, a debtor who is unable to command ready money to meet his obligations as they fall due, is not forbidden by the said Act from making a fair disposition of his property in order to accomplish this object.—*Tiffany, Trustee, v. Lucas*, vol. 8, p. 49.

### **35. Intent Made with.**

Where the intent of the bankrupt, in making sale of his goods, was to carry on his business to pay his maturing obligations, such sale cannot be set aside, even though made to one knowing of his insolvency, at a price below cost.

The fraudulent intent on the part of the sellers is in every case an essential requi-

site to establish the invalidity of a transfer of property.—*Sedgwick, Assignee, v. Lynch*, vol. 8, p. 289.

### **36. Liens.**

When the interests of all parties seem to demand it, the court is authorized to direct the assignee to sell the real estate of a bankrupt corporation free from all liens, except the existing and recorded mortgages.—*In re National Iron Company*, vol. 8, p. 422.

### **37. By Mortgagee before Adjudication does not Bar Assignee.**

An injunction to restrain a mortgagee from making a sale of real estate belonging to a bankrupt will not be granted when it appears that the mortgagee made a sale of the property before the adjudication of bankruptcy, but the purchaser, under advice of counsel, declined to make payment and receive deeds therefor, and the sale sought to be enjoined is made under the same terms as before, with the appendix, "the above property will be sold for account of whom it may concern."

*Held*, That the words of the appendix, for account of whom it may concern, cannot be construed to affect the assignee and mortgagee.

That the first sale was, in reality, no sale, and hence, from and after the adjudication, the mortgagee's rights and powers to sell were such, and only such, as could be exercised consistently with the provisions of the Bankrupt Law, and under that law the assignee is really the agent both of the mortgagee and the other creditors.—*Whitman, Assignee, v. Butler*, vol. 8, p. 487.

### **38. Foreclosure by Leave of Bankrupt Court.**

A foreclosure sale against property of a bankrupt, taking place in the State court, by permission of the Bankrupt Court, cannot be afterwards set aside by an assignee in bankruptcy, and the purchaser at such sale will be compelled to take title.—*Lenihan v. Haman et al.*, vol. 8, p. 557.

### **39. Improper Exercise of Discretion.**

An order directing the sale of property incumbered over its value is not void for want of jurisdiction in the court granting it, but it will be set aside on petition for review as an improper exercise of the dis-



cretion granted the District Court.—*Dillard*, vol. 9, p. 8.

#### 40. Secured Creditor applying for a Sale of Securities.

A creditor holding security for his debt does not in any manner prejudice his claim to the security he holds, by proving his debt as a debt with security, and setting out, in his proof of debt, the particulars of the security and its estimated value.

Such proof is a pre-requisite to any action for the appropriation of the security, in satisfaction, in whole or in part, of the debt, under Section 20 of the Act.

A sale, under Section 20 of the Act, cannot be ordered by the court until an assignee in bankruptcy has been appointed, as such a course would cut off the election given the assignee by the Act, 1, to redeem the property pledged, 2, to sell it subject to the lien; 3, to release the equity of redemption at such a price as may be agreed on.—*Grinnell & Co.*, vol. 9, p. 29.

#### 41. Sheriff's Sale without Notice of Bankruptcy Proceedings.

A sheriff levying on the bankrupt property after commencement of proceedings, and selling the same, paying over proceeds to execution-creditor with no actual notice that bankruptcy proceedings had ever been commenced, may still be compelled to account to the assignee in bankruptcy, when appointed, for the proceeds of the goods so sold and paid for.—*In re G. B. Grinnell & Co.*, vol. 9, p. 29.

#### 42. Employing Auctioneer.

The law contemplates that the assignee himself shall sell the property of the bankrupt. Where an auctioneer is employed, the assignee must show affirmatively the necessity for such employment, or the auctioneer's charges will not be allowed him by the court in his final account.—*In re Sweet et al.*, vol. 9, p. 48.

#### 43. Of Stock of Goods.

Where a partnership was dissolved, and whole stock transferred to the only solvent partner, for the purpose of settling the affairs of the partnership, a sale of the whole stock by such partner is not an act of bankruptcy, for it was designed that a sale by gross should be made, and the evidence rebuts the presumption made by the statute.—*In re Christopher Weaver*, vol. 9, p. 132.

#### 44. Purchase by Trustee.

A trustee cannot, as a member of a co-partnership, purchase at a sale wherein he as trustee sells.—*Lockett v. Hodge, Assignee*, vol. 9, p. 167.

#### 45. Contingent Interests.

A court of equity will in no instance expose to sale an interest capable of being reduced to certainty where any doubt exists as to its character and extent.

A court of equity may sell mortgaged premises free from incumbrances, remitting the lien holders to the proceeds, at the suits of subsequent incumbrances or other parties having right in the equity of redemption. The power in this regard, so frequently exercised in bankruptcy, is but an application there of this principle.—*Sutherland et al., etc., v. Lake Superior Ship Canal, etc., Co. et al.*, vol. 9, p. 299.

#### 46. Liquidation of Liens.

The Circuit Court will entertain a bill by an assignee in bankruptcy against several mortgagors and their lien holders to ascertain the amount due, and sell all the property free from incumbrances.—*Sutherland et al. v. Lake Superior Ship Canal R. R. & Iron Co. et al.*, vol. 9, p. 299.

#### 47. By Assignee without Order of Court.

Where a bankrupt owned property which he had only partly paid for, and left the possession and rent of it to the seller under an agreement that the seller was to apply the rent in the reduction of the purchase-money,

*Held*, That this does not convey such an interest in the property back to the vendor, as will prevent the full title from vesting in the assignee in bankruptcy.—*Hall v. Scovel*, vol. 10, p. 295.

#### 48. Vendor Reserving Rents.

Where an assignee sells without an order of Court, the purchaser will be entitled to the property sold, and its rents and profits from the date of the sale, and need not await a confirmation by the court.—*Hall v. Scovel*, vol. 10, p. 296.

#### 49. Idem—Tax Lien.

If a sale of the property was made without the order of the court, it was subject to the lien of the taxes; if made under a judicial decree, it did not affect the lien unless the revenue officer or some proper



representative of the same were made a party to that application.—*Meeks v. Whately*, vol. 10, p. 498.

**50. May be had on Judgment recovered before Bankruptcy.**

If there has been a recovery of judgment before bankruptcy the sheriff may go on and sell, but the Bankrupt Court has the right to cause the sale to be made under its supervision and control.

The United States District Court sitting in bankruptcy has full and complete jurisdiction to administer the estate of the bankrupt.

Decree of the court below dismissing the bill affirmed.—*T. A. & J. M. Allen & Co. v. Montgomery et al.*, vol. 10, p. 503.

**SAVINGS BANKS.**

See CORPORATION,  
INSOLVENT LAW,  
PRIORITY.

**Not Entitled as such to Preference.**

The Acts of the Legislature of New York, Chapter 257 of the Laws of 1853, and Chapter 136 of the Laws of 1858, do not entitle a savings bank to be preferred to other creditors in distributing the estate of a bankrupt bank of deposit under the Bankrupt Law.—*The Sixpenny Savings Bank v. Estate of the Stuyvesant Bank*, vol. 10, p. 309.

**SCHEDULES**

See AMENDMENT,  
ASSETS,  
FRAUD,  
OATH,  
PARTNERS.

**1. Sum and Date of Debt—Items of Bankrupt's Personal Estate.**

It is a sufficient statement in the bankrupt's schedules, to give the sum and date of the debt.

Schedules are defective if they do not set forth the separate items of the bankrupt's personal estate, and they may be remedied by amendment at the instance of the bankrupt.—*In re W. D. Hill*, vol. 1, p. 16.

**2. Amendment—Use of Abbreviations.**

In the course of proceedings in the case of a voluntary bankrupt, it was discovered that his schedules were incorrect and defi-

cient, and the Register, on his own motion, ordered the same to be corrected and amended, to which the bankrupt objected.

*Held*, That such order may be so made by the Register at any stage of the proceedings.

The sign "do," dots, or inverted commas, cannot be used in the schedules by way of reference to indicate anything necessary to be stated.—*In re Freeman Orne*, vol. 1, p. 79.

**3. Promissory Note or Judgment.**

In Schedule A, No. 3, in respect to debts stated, the non-existence or existence of a promissory note or a judgment, and sole or joint liability of bankrupt must be also stated in sufficient form.—*Orne*, vol. 1, p. 79.

**4. Entire List of Forms need not be used.**

A debtor is not required, in making up his schedules, to use the entire list of forms, but may use only those which are appropriate. He should state why the blanks are omitted.—*Anonymous*, vol. 1, p. 122.

**5. Copartnership Debt.**

A debt due a firm should be scheduled as due the firm under the name and style by which it is known, without designating the individual members thereof.—*Anonymous*, vol. 1, p. 122.

**6. Amendment in Uncontested Cases—Filing.**

The Register may allow amendments, if uncontested, to bankrupt's schedules of property and liabilities.

The originals of amendments allowed are to be filed with the clerk.—*In re Charles A. Morford*, vol. 1, p. 211.

**7. Debts Barred by Statutes of Limitations.**

A bankrupt omitted the names of certain creditors from his schedules, for the reason that he supposed the Statute of Limitations was a bar to the debts due these creditors.

*Held*, That the debts in question should have been included in the schedules, and that those creditors were entitled to notices of the proceedings.—*In re John S. Perry*, vol. 1, p. 220.

**8. After Amendment—New Warrant.**

After the schedules are amended a new warrant should issue to be served on the creditors whose names have been introduced

by the amendment.—*John S. Perry*, vol. 1, p. 220.

#### 9. Effect on Statute of Limitations of Entry on.

The entry of a debt upon the schedule by a bankrupt is not such an acknowledgment or new promise as will revive the debt.—*In re Daniel P. Kingsley*, vol. 1, p. 329.

#### 10. Idem.

Such debt is not revived by its entry on the schedule of liabilities of the bankrupt.—*In re Heman P. Harden*, vol. 1, p. 395.

#### 11. Material Additions.

Material additions to the schedules of debts, or of property are not allowable by way of amendment after the first meeting of creditors, except upon such conditions as may prevent injustice. In some cases the issuing of an alias warrant will be required.—*In re Robert Ratcliffe*, vol. 1, p. 400.

#### 12. Amendment—not a Matter of Course.

A bankrupt cannot amend his schedules by adding other names to the list of creditors as of course after the warrant and after the close of the business of the first meeting.—*In re John Morganthal*, vol. 1, p. 402.

#### 13. Husband's Equitable Interest in Wife's Estate.

Where the husband's equitable interest in the estate or property of the wife has been levied upon and sold under execution, the husband has no longer any interest or estate to be returned in his schedules; and he cannot be charged with swearing falsely in stating that he has no interest or estate in such property.—*In re Hummitsh*, vol. 2, p. 12.

#### 14. Newspaper—Owner's Name should Appear.

A bankrupt's schedules should be complete and definite; hence it is improper to designate debts owing to newspapers by their names, but in such case the owners of such papers should appear in the schedules or list of creditors.—*Anonymous*, vol. 2, p. 141.

#### 15. Judgment Debt where set Forth.

A judgment in favor of a bankrupt should be set forth in Schedule B, No. 2,

under letter b. A bankrupt in preparing Schedule B, No. 2, is not restricted to the letters therein printed. He may exhaust the alphabet if he chooses, and then use other marks, if necessary, to describe his personal property accurately or lucidly.—*In re Sallee*, vol. 2, p. 228.

#### 16. Names of Creditors.

The omission of the names of creditors on the schedule, with the knowledge and consent of those creditors, is not such a willful and fraudulent omission as to prevent a discharge of the bankrupt upon the objection of other creditors.—*In re Otis N. Needham*, vol. 2, p. 387.

#### 17. Application to Amend.

An application of a bankrupt to amend his schedules is *ex parte*, and the Register has power to allow him to do so.

A creditor does not, by opposing such an application, raise a question of fact which it is necessary to certify for the opinion of the judge.—*In re Watts*, vol. 2, p. 447.

#### 18. Omission of Property Assigned.

If a bankrupt has property in his possession, and has the use and enjoyment of it as his own, and willfully omits it from his schedules and keeps it from his assignees, it is no answer to a charge of concealment thereof, that the property belonged of right to his assignees under an earlier assignment in insolvency, under the laws of the State of his residence.—*Beal*, vol. 2, p. 587.

#### 19. Joint Property in Use and Possession.

If a bankrupt has the actual possession of joint estate and joint books of account, he must disclose them to his separate assignees, and if he willfully fails to do so, is not entitled to his discharge.—*In re Beal*, vol. 2, p. 587.

#### 20. Willful Omission of Creditor's Name.

The discharge in bankruptcy was sufficiently pleaded. The mere omission of the name of a creditor on the schedule of a bankrupt is not a substantive ground for preventing or avoiding the discharge of the bankrupt as to such creditor, unless the omission was willful or fraudulent.—*Payne & Brother v. Able and others*, vol. 4, p. 220.

**21. Idem.**

The omission of a creditor's name from the schedule of indebtedness of a bankrupt is not sufficient ground for annulling and setting aside a discharge, unless such omission is shown to have been fraudulent.—*Symonds v. Barnes*, vol. 6, p. 377.

**22. Amendment Practice in.**

A Register has the right to allow amendments to the schedules on the *ex parte* application of the bankrupt, at any time while the cause is pending before him, but it is the better practice, if there shall have been an appearance on the part of creditors, to issue an order to show cause, etc., and to require due notice of such application to be given.

It is the duty of the bankrupt to amend his schedules so as to make them conform to the facts, and that the filing of specifications does not deprive him of that right or release him from that duty.

The Register should allow all necessary and proper amendments whenever a proper cause therefor is shown.—*In re B. Heller*, vol. 5, p. 46.

**23. Growing Crops.**

Growing crops unmaturing should be entered by the bankrupt on his schedule of personal property.—*In re Schumpert*, vol. 8, p. 415.

**SECESSION.**

See WAR.

**SECOND AND THIRD MEETINGS.**

See MEETINGS.

**SECURED CREDITORS.**

See ADVANCES,  
COURTS,  
DEBTS,  
INTEREST,  
LIEN,  
PAYMENT,  
PROOF OF DEBT,  
REASONABLE CAUSE,  
SURPLUS.

**SECURED CREDITORS—**

- I. *Advances*, p. 620.
- II. *Assessment of Value*, p. 620.
- III. *Banker*, p. 620.

- IV. *Change of Securities*, p. 620.
- V. *Continuing Debt*, p. 620.
- VI. *Contract to Secure*, p. 620.
- VII. *Deficient Security*, p. 620.
- VIII. *Endorser*, p. 621.
- IX. *Entirety of Contract*, p. 621.
- X. *Form*, p. 621.
- XI. *Insolvency*, p. 622.
- XII. *Insurance*, p. 622.
- XIII. *Interest*, p. 622.
- XIV. *Joint*, p. 622.
- XV. *Judgment*, p. 622.
- XVI. *Liquidation of Lien*, p. 622.
- XVII. *Petitioning in Bankruptcy*, p. 623.
- XVIII. *Preference*, p. 623.
- XIX. *Proof in Bankruptcy*, p. 623.
- XX. *Restraining*, p. 624.
- XXI. *Reasonable Cause*, p. 624.
- XXII. *Sale*, p. 625.
- XXIII. *Separate Debts*, p. 625.
- XXIV. *Separate Securities*, p. 626.
- XXV. *Transfer*, p. 626.
- XXVI. *Trustee*, p. 626.
- XXVII. *Voidable Title*, p. 626.
- XXVIII. *Vote*, p. 626.
- XXIX. *Waiver*, p. 627.

**I. Advances.**

**1. Pending Preparation of Mortgage.**

Advances made in good faith while a mortgage is being prepared, and as part of the money agreed to be secured by it, will be protected, though there should be a change of the debtor's circumstances after the money was advanced, and before the deed was delivered.—*Ex parte Ames, In re McKay & Alders*, vol. 7, p. 230.

**II. Assessment of Value.**

**2. May be Re-assessed.**

Where, under the 20th Section, the value of a security is agreed upon between the assignee and a creditor, and after such valuation new facts are developed, or occur, to show the valuation to have been erroneous, the court will order a new valuation to be made in cases where it will be manifestly in furtherance of justice.—*Newland*, vol. 9, p. 62.

**III. Banker.**

**3. On Special Deposit.**

The respondents, assignees of a bankrupt, brought an action against the appellants' bank to recover a sum belonging to

the bankrupt, and alleged to have been in the appellants' hands at the date of adjudication of bankruptcy.

The said sum, in pursuance of an agreement between them and the bankrupt previously to adjudication, had been carried by the appellants to a special account, as security against bills not yet at maturity, drawn by the bankrupt and discounted by the appellants.

*Held*, that the action failed, since by the contract the sum claimed formed no part of the bankrupt's estate, but was rightly in the hands of the appellants at the time of the action.

Fraudulent preference, under such circumstances, could have no application to the case.—*The Chartered Bank of India, Australis, and China v. Evans et al.*, vol. 4, p. 186.

#### IV. Change of Securities.

##### 4. Deed of Trust for Mechanic's Lien.

Giving a deed of trust upon property, to secure a debt previously secured by a mechanic's lien, is merely a change of securities, and not a fraudulent preference given to the mechanic having the lien.—*In re Christopher Weaver*, vol. 9, p. 132.

##### 5. In Substance of Deed, without Increase of Value.

Where a security by way of mortgage is given more than four months before bankruptcy, a change in the former substance of the deeds made within four months of the bankruptcy will be protected if no greater value were put into the creditor's hands at that time than he had before.—*Sawyer et al. v. Turpin et al.*, vol. 5, p. 339.

#### V. Continuing Debt.

##### 6. Unaffected by Change of Form.

A mortgage or other conveyance made as security for a debt evidenced by a note or bond, will be upheld as a security for the same continuing debt, though the evidence of it may be changed by renewal or otherwise, but where the security is changed the same will not be.—*Charles H. Wynne*, vol. 4, p. 23.

#### VI. Contract to Secure.

##### 7. Effectual though not formally Executed.

A creditor who has his debt secured by a

valid trust deed containing a covenant to insure the buildings erected on the property to their full insurable value has a clear and specific lien upon the proceeds of the insurance, to the exclusion of the general creditors in case of a loss by fire. The fact that the policies were not regularly assigned makes no difference, as in equity the assignment is executed the moment the insurance is effected; nor is the case altered on account of a clause in the said deed allowing the insurance company to be selected by the party loaning the money, because an insurance having been effected to the insurable value of the property the creditor has no power to insure further.—*In re Sands Ale Brewing Co.*, vol. 6, p. 101.

#### VII. Deficient Security.

##### 8. Proof of Deficiency only Inequitable.

The rule in bankruptcy, that a creditor, having security for his debt, is to be admitted as a creditor only for the balance of his debt, after deducting the value of his security, is not founded in the principles of equity.

The obligation of the debtor being the principal, and the pledge, the collateral or incident, the creditor has the right to resort to the debtor in the first instance, retaining the pledge for any deficiency which he may be unable to collect of his debtor.—*Jervis v. Smith*, vol. 8, p. 594.

##### 9. Can Prove only Balance after Sale.

Creditors holding security can be admitted as creditors only on the balance after sale thereof.—*J. F. Snedaker*, vol. 3, p. 629.

##### 10. To Petition in Bankruptcy.

A creditor who holds a mortgage upon the property of his debtor, can proceed against the debtor, by petition in bankruptcy, provided the security falls short of a full indemnity by three hundred dollars or more.—*In re W. B. Alexander. In re J. F. Alexander*, vol. 4, p. 178.

#### VIII. Endorser.

##### 11. Security from Maker.

The liability of a bankrupt as endorser on certain promissory notes having become absolute, a creditor holding a mortgage of property from the maker thereof as security for their payment may, never-

theless, prove the full amount of the notes against the bankrupt as endorser.—*Cram*, vol. 1, p. 504.

### 12. Maker Bankrupt.

Creditors holding notes or bills secured by a mortgage to an accommodation endorser, can, if necessary, obtain control of such security by making the proper appeal to a court of equity.

A creditor holding security is only entitled to a dividend upon the balance of his claim after deducting the proceeds of securities in his hands.—*In re Jaycox & Green*, vol. 7, p. 303.

## IX. Entirety of Contract.

### 13. Void in Part, void in Toto.

Where a creditor, knowing of the embarrassment of his debtor, takes a mortgage to secure a pre-existing debt, and also a credit given at the time of the execution of the mortgage, the mortgage being void in part as to the pre-existing debt, must be held to be void as to the whole.—*C. D. Tuttle v. D. W. Truax, Assignee*, vol. 1, p. 601.

### 14. Contra. Separation Void Part.

A creditor advanced money to his debtor, within four months of proceedings in bankruptcy, and took a mortgage of the debtor's stock-in-trade, first, as security therefor; secondly, included in same mortgage, another (antecedent) debt due to himself, which was secured by a prior mortgage on the same property, held by and given to the bankrupt's (debtor's) former copartner; and thirdly, for convenience, and to save writing an additional mortgage, an overdue note taken up and held by the endorser, by whose request it was inserted in the mortgage. Subsequent to proceedings in bankruptcy, the stock-in-trade was sold, and with the consent of the several mortgagees, who proved their claims before the Register as secured debts, and joined with the assignee in submitting to the Register their rights under the mortgage. The Register held that the mortgage was void as against the assignee because intended to secure a pre-existing debt, etc.—the overdue note—according to the principle of the decision in *Denny & Dana*, 2 Cush. 160.

*Held*. On appeal by the mortgagee (the

endorser withdrawing therefrom and surrendering all rights under the mortgage), that the mortgage could be severed and sustained in part and denied as to the rest. The court also disapproved the mode of presenting the case. It should be presented by a petition of the mortgagee against the funds in court.—*In re Stowe ex parte Godfrey*, vol. 6, p. 429.

## X. Form.

### 15. Bill of Sale to Warrant of Attorney.

An intended security which would be ineffectual in the form of a mortgage or bill of sale cannot be rendered effective through the device of a warrant of attorney given by a trader to a creditor, which enables him at pleasure to stop the debtor's business and prevent other creditors from getting any share of his available assets.—*Hood et al. v. Karper et al.*, vol. 5, p. 358.

## XI. Insolvency.

### 16. Prior to, with Intent to Prefer.

A mortgage given by debtor before becoming insolvent, and not in contemplation of bankruptcy, to secure a creditor, although made with an intent to prefer said creditor, is not within any of the inhibitions of the 39th Section of the Bankrupt Act, and is not, therefore, an act of bankruptcy.—*Dunham v. Orr*, vol. 2, p. 17.

### 17. For present Loan.

There is nothing in the Bankrupt Law which forbids the loaning of money to a man in embarrassed circumstances, if the purpose be honest and the object not fraudulent; and it makes no difference that the lender had good reason to believe the borrower to be insolvent, if the loan was made in good faith, without any intention to defeat the provisions of the Bankrupt Act.—*Tiffany et al.*, vol. 9, p. 245.

## XII. Insurance.

### 18. Upon Debtor's Life.

A creditor, after the bankruptcy of his debtor, takes out an insurance on the life of his debtor as security for the debt due him, and pays all the premiums out of his (the creditor's) own money. He also proves his debt in bankruptcy, and receives dividends thereon. The bankrupt dies prior



to the declaration of the last dividend, and the insurance company pays the creditor in full the original amount of the debt.

*Held*, The creditor must pay to the assignee in bankruptcy the whole amount received from the insurance company over the amount sufficient, with the dividends and payments previously made, to pay the debt in full, but he was entitled to deduct also the amount of premiums paid by him, with interest from the time of payment.—*Newland*, vol. 9, p. 62.

### XIII. Interest.

#### 19. On Debt, after Adjudication.

A secured creditor may apply the proceeds of his security to the satisfaction of his debt, principal and interest, up to the time of payment, when so stipulated in his contract.—*J. C. Haake*, vol. 7, p. 61.

### XIV. Joint.

#### 20. Joint Debt Secured upon Separate Estate.

In bankruptcy, the joint and separate estates are considered as distinct estates. A joint creditor, having security on the separate estate, may prove against the joint estate without relinquishing his security—may prove his whole claim against both estates, and receive a dividend for each, but so as not to receive more than the full amount of his debt from both sources.—*In re Howard, Cole & Co.*, vol. 4, p. 571.

#### 21. Trust Deed on Property of Wife.

Security for the payment of a note, by way of a deed of trust, given on the property of the wife by the husband and wife jointly, is security within the meaning of the Bankrupt Act, and such claim should be allowed as a secured demand, although the wife may have died leaving heirs.

The court will, on proper motion, attend to the application of the security, and to the interests of the assignees in the realty.—*In re Hartel*, vol. 7, p. 559.

### XV. Judgment.

#### 22. Using Bankrupt Court to Enforce.

A judgment-creditor cannot claim jurisdiction of the Bankruptcy Court for the

collection of his debt, fully secured by the only lien on real estate.—*Avery v. Johann*, vol. 3, p. 144.

### XVI. Liquidation of Lien.

#### 23. Conveyance of Property Mortgaged.

A conveyance by an insolvent debtor, to his creditor, of property upon which said creditor has a lien to a greater amount than the value thereof, is not void under Section 35 of the Bankrupt Act. Section 35 of said Act does not declare void a judgment obtained against an insolvent debtor under any circumstances, and the lien, if obtained without fraud or collusion with the debtor, is as conclusive evidence of the claim and its amount as if given against a solvent debtor. A transfer of property which prefers one creditor over another, is presumed to have been made with a view to such a preference, and in fraud of said Act.—*Catlin v. Hoffman*, vol. 9, p. 342.

### XVII. Petitioning in Bankruptcy.

#### 24. Sole Creditor cannot use the Bankrupt Court to Collect his Debt.

A single creditor whose debt is secured by a lien on lands of greater value than the amount of his debt, will not be permitted to abandon all remedies open to him for the collection of his debt, and use the Bankruptcy Court for the purpose.—*Avery v. Johann*, vol. 3, p. 144.

#### 25. Idem. Amply Secured.

The District Court will not take jurisdiction in bankruptcy on the petition of an only creditor whose debt is secured by virtue of a judgment, which is the only lien on real estate.

Such creditor seeking to set aside a fraudulent conveyance, must follow his remedy by bill in the State court.

A conveyance, even though fraudulent, is not made "in contemplation of bankruptcy or insolvency," there being no other creditors, and this debt being secured.

There is nothing to bring such a case within the scope or intent of the Act.—*In re Johann*, vol. 4, p. 434.

#### 26. Will Sustain Petition.

A debt wholly or in part secured, either by levy under an execution, by pledge of personal property, or mortgage upon real



estate, will sustain a petition for adjudication in bankruptcy.—*In re Stansell*, vol. 6, p. 186.

### 27. *Idem.* Practice in.

The better practice is, when the debt is *fully* secured, to waive the security in the petition, but this is not necessary to its support.—*In re Stansell*, vol. 6, p. 183.

## XVIII. Preference.

### 28. Something more than Mere Giving Security Necessary.

There is not sufficient ground in the evidence for adjudging that debtor was insolvent or contemplated insolvency, or that, in making the mortgage, he even thought of the Bankruptcy Act, much less intended to violate any of its provisions. The mortgagees wisely asked for security, and the debtor had a right to give it. They are not shown to have violated any law, nor, so far as appears in the proofs, any private pledge or stipulation, or any wholesome custom of trade.—*Potter, Denison & Co. v. James H. Coggeshall, Trustees*, vol. 4, p. 73.

### 29. Perfecting Inchoate Security.

The mere giving of security for the loan of money then made, by an insolvent, is not a preference under the Bankrupt Act.

Where, on the loan of money, an inchoate security is taken—as where the lender takes a confession of judgment—the lender cannot afterwards, on learning of the insolvency of the debtor, perfect his security, as entering the confession of record, in the case suggested.—*Clark v. Iselin*, vol. 9, p. 19.

### 30. Security Given by Debtor of Bankrupt.

Where the obligor on a bond, in order to indemnify his sureties, obtains securities from one of his debtors and turns them over to sureties, the transaction is a *preference* between the parties, under the first clause of the 35th Section of the Bankrupt Act, and not a transfer under the second clause, and the four months' limitation applies.

The fact that the securities were made to run directly to the sureties, does not change the character of the transaction when they were obtained at the instance

of the obligor. A court of equity will look at the substance rather than the form of the transaction.—*Smith, Assignee, v. Little*, vol. 9, p. 111.

## XIX. Proof in Bankruptcy.

### 31. Whether General or Specific.

A creditor who has a lien, either specific or general, must disclose its particular character, that it may legally, and according to its priority, be ascertained and liquidated.—*In re Sampson D. Bridgman*, vol. 1, p. 312.

### 32. Balance Unpaid after Foreclosure

A creditor who has a mortgage may apply to the Bankrupt Court to have the property covered by his lien sold, the proceeds to be applied to the payment of his debt. Should the security fail to satisfy the claim, such creditor may be allowed to prove for the part remaining unpaid, and obtain a dividend thereon.—*In re Taylor R. Stewart*, vol. 1, p. 278.

### 33. Sale under Trust Deed. Deficiency, how Proved.

A creditor, secured by a deed of trust caused the property to be sold, and bought in a portion thereof, the residue being sold to third parties, and applied to prove his debt in bankruptcy.

*Held*, That he should so prove it, and he would be allowed the same to an amount less the value of the property so sold to third parties, to be paid from the proceeds of the sale of the trust property. Any surplus from said sale would form part of the general assets. For any deficiency, the secured creditor would become a general creditor to that extent, entitled to share in the general assets.—*In re Ruehle*, vol. 2, p. 577.

### 34. Balance after Sale of Security. Cannot Prosecute to Final Judgment.

Where a creditor holding a mortgage lien upon the real estate of bankrupt as security, etc., proceeds to foreclose,

*Held*, A creditor, whose debt is provable, cannot prosecute to final judgment either at law or in equity. Creditors holding security can be admitted as creditors only on the balance after sale thereof—he must go into the Bankrupt Court.—*In re J. M. Snedaker*, vol. 3, p. 629.

**35. Preferred Creditor.**

The right of a preferred creditor to prove his debt is conferred by the Bankrupt Act, independent of the second clause of Section 23, the operation of that clause being merely to suspend that right until such creditor shall have surrendered all property, etc., as therein provided, and in the construction of this clause it makes no difference whether the petition be voluntary or involuntary.—*Scott & McCarty*, vol. 4, p. 414.

**36. Inadvertently Failing to Claim Security.**

Where a creditor who has security for his claim makes proof of the same, without mentioning the security, through inadvertence and ignorance of the law, an order will be entered granting to the said creditor leave to withdraw his proof and restoring to him his rights as though no proof had been filed.—*In re Clark & Bininger*, vol. 5, p. 255.

**37. Liens Enforceable only in Bankrupt Court.**

Creditors having security, whether by judgment, mortgage, or otherwise, must prove their debts and foreclose their liens under the authority of the court in bankruptcy, or they may not only be barred of their debt, but may also lose the benefit of their securities.—*Davis, Assignee, v. Anderson et al.*, vol. 6, p. 145.

**38. Reference to Register.**

A creditor holding collateral is entitled to have his claim referred to the Register for investigation, and the assignee is not justified in rejecting it until proofs have been taken and the matter fully inquired into.—*Nounnan & Co.*, vol. 6, p. 579.

**39. Cannot Change Form of Proof after Dividend.**

When proof as an unsecured creditor is made through ignorance or mistake, a creditor ought to be allowed to withdraw his proof and prove as a secured creditor, but after the taking of a dividend upon his whole debt, as an unsecured creditor, to the prejudice of the general creditors, he must be held to his election.—*In re Jaycox & Green*, vol. 8, p. 241.

**40. Security not Prejudiced by.**

A creditor holding security for his debt

does not in any manner prejudice his claim to the security he holds, by proving his debt as a debt with security, and setting out, in his proof of debt, the particulars of the security and its estimated value.

Such proof is a prerequisite to any action for the appropriation of the security, in satisfaction, in whole or in part, of the debt, under Section 20 of the Act.—*Grinnell & Co.*, vol. 9, p. 29.

**41. Amendment of Proof.**

A creditor having security, and proving his demand in ignorance of his privilege, and omitting to mention his security, should be allowed in the absence of fraud to amend his proof.—*McConnell*, vol. 9, p. 387.

**42. Idem.**

Where a secured creditor has proved as an unsecured creditor from ignorance of the law, the court will allow an amendment in the proof in cases untainted with fraud, and when all parties can be replaced in the same position as if the debt had been properly proved at first.—*Parkes v. Parkes*, vol. 10, p. 82.

**43. Valuation or Release of Security Prerequisite.**

A mortgagee cannot prove his debt in bankruptcy, unless he releases or surrenders the mortgaged property, or agrees with the assignee as to its value, so that he might prove for any excess of indebtedness over such value.—*High & Hubbard*, vol. 3, p. 191.

**44. Relinquishment of Security.**

Where a bank proved its claim as an unsecured debt,

*Held*, It must relinquish the securities held by it to the assignee.—*Granger & Sabin*, vol. 8, p. 30.

**XX. Restraining.****45. Doubtful Title.**

No equity of the general body of the bankrupt's creditors can be asserted for their common, equal benefit, on the mere ground of doubtfulness of his title to the subject of his lien and the danger of consequent sacrifice at a forced sale to restrain the foreclosure of a lien.—*Donaldson*, vol. 1, p. 181.

**XXI. Reasonable Cause.****46. Knowledge of Insolvency.**

Although a security given to a creditor

by mortgage be out of the usual course of business of the debtor, yet, unless, the creditor knows of the insolvency of the debtor or have reasonable cause to believe him insolvent, the security will be valid, and may be enforced, although the debtor may have been in fact insolvent at the time the security was given.—*John R. Lee, Assignee, v. Franklin Avenue German Savings Institution et al.*, vol. 3, p. 218.

#### 47. Idem.

Where the note and warrant of attorney on which a judgment was founded, were given within four months before proceedings in bankruptcy, being the agreed security for a loan made at the time, and it conclusively appeared that the creditor had no reasonable cause to believe the debtor to be insolvent, though he knew him to be so at the time of entering the judgment, the judgment is valid.

Where the debtors confided to one of their creditors the secret of their embarrassment and insolvency, for the purpose of protecting their surety, and better securing the collection of the debts by the prompt seizure of their property in execution, and the creditor in consequence of this information immediately issued execution,

Held to fall within the provisions of the 35th Section of the Bankrupt Act, and that the assignee was entitled to the property, or to the value of it.—*Vogle, Assignee, v. Lathrop*, vol. 4, p. 439.

#### 48. Ordinary Course of Business.

Security given to a creditor by an insolvent debtor, out of the ordinary course of business, cannot be held valid simply because it proceeded from the voluntary act of the debtor without previous communication with the favored creditor, either as to the security or debtor's financial condition.

When a creditor accepts a security he is conclusively presumed to know what appears on its face, and to have reasonable cause to believe it was intended to accomplish its ordinary and necessary effect.—*In re Lewis B. Graham, Assignee of Caroline A. Martin, v. Oliver Stark and Elizabeth B. Savage*, vol. 3, p. 357.

#### XXII. Sale.

##### 49. Prior to Appointment of Assignee.

A sale, under Section 20, of the property

pledged, cannot be ordered until an assignee is appointed.—*In re Grinnell & Co.*, vol. 9, p. 29.

##### 50. Proof before Order.

Creditors can exhibit and substantiate their claims against bankrupts, so as to comply with the requirements of the 22d Section of the Bankrupt Act, without previously ascertaining the value of securities which they may hold.

No permission for them to sell such securities, conceded to be the property of the bankrupt, should be granted until their right to do so is shown in the manner prescribed by said Section.—*In re Edward Bigelow, David Bigelow & Nathan Kellogg*, vol. 1, p. 632.

##### 51. Idem.

A creditor of a bankrupt holding security by mortgage or deed of trust cannot enforce his security after the commencement of proceedings in bankruptcy until he first prove his debt and receive permission of the court. If he proceed without authority of court the sale will be invalid, and will be set aside, or upon application for good cause the court may confirm the sale upon terms after the debt is properly proved.—*Lee v. Franklin Avenue German Savings Institution*, vol. 3, p. 218.

##### 52. Idem.

After the commencement of proceedings in bankruptcy, a creditor secured by deed of trust cannot enforce his security by sale, without the permission of the Bankrupt Court, and any sale so made will, upon proper application, be set aside.—*Smith, Assignee, v. Kehr et al.*, vol. 7, p. 97.

##### 53. Collaterals to Call Loans.

When stock is pledged to secure call loans, the pledgee need not obtain leave of the court, on the bankruptcy of the pledgor, to sell the stock pledged and pay the surplus into court for the benefit of whom it may concern.—*In re George B. Grinnell*, vol. 9, p. 137.

#### XXIII. Separate Debts.

##### 54. Admitted as Creditor for Debts Unsecured.

A creditor, whose claim consists of notes and drafts for which he has no security,

and also for a debt secured by two mortgages, can be admitted as a creditor only for that part of his claim which is unsecured, and the indebtedness for which he has security must rest in abeyance until the value of the securities is ascertained in the manner provided for in the 20th Section of the Bankrupt Act.—*In re Hanna*, vol. 7, p. 502.

#### XXIV. *Separate Securities.*

##### 55. Note Secured by Collaterals and Indorser.

A bank is entitled to certain shares of its capital stock, subscribed by the bankrupt as collateral security for his stock note, and also on his general indebtedness to the bank, and it has a right to hold such stock, although there is an indorser to the note.

The bank should prove its demand for the debt due as secured by the stock, and, by leave of court, have it sold, the proceeds to be applied to payment of the debt, and prove as a creditor of the estate for any balance that may remain.—*In re Thomas Morrison*, vol. 10, p. 105.

##### 56. When Prior Security Avoided.

Creditors taking out executions against the property of their judgment debtors, not having reasonable cause to believe them insolvent at the time, obtain a valid lien upon the property thus levied upon as against the assignee in bankruptcy, and when invalid levies are set aside, they come into full operation.—*Black v. Secor*, vol. 2, p. 171.

#### XXV. *Transfer.*

##### 57. To Fund in Court.

The Bankrupt Court may order a sale of the bankrupt's property free and clear of incumbrances, and the secured creditor will then have his remedy only against the fund in court. If the secured creditor fails to prove his debt and proceeds against the fund, he does so at his peril.—*Davis v. Anderson et al.*, vol. 6, p. 146.

#### XXVI. *Trustee.*

##### 58. Cannot Sell after Adjudication.

A creditor, holding the security of a deed of trust in the nature of a mortgage, with a power of sale in a third party as trustee, must prove his debt as a creditor holding a

security, and obtain the permission of the court to have the security sold. If he direct a sale without this permission, the court, upon application of the assignee, will set aside the sale.—*Davis et al.*, vol. 2, p. 392.

##### 59. On Joint Property.

Security for the payment of a note, by way of a deed of trust, given on the property of the wife, by the husband and wife jointly, is security within the meaning of the Bankrupt Act, and such claim should be allowed as a secured demand, although the wife may have died leaving heirs.

The court will, on proper motion, attend to the application of the security, and to the interests of the assignees in the realty.—*In re J. Hartel*, vol. 7, p. 559.

#### XXVII. *Voidable Title.*

##### 60. Advance in Good Faith Protected.

One who, though solvent, while weak and unsteady in his pecuniary matters, makes a settlement on his wife as an anchor in case of his failure in business, commits a fraud upon his creditors, and it will be set aside. Where a settlement is made by a bankrupt on his wife, in fraud of his creditors, this, though voidable by the assignee in bankruptcy, is not void *ab initio*. And one purchasing of the wife for value without notice, will be protected.—*Sedgwick v. Place*, vol. 10, p. 29.

#### XXVIII. *Vote.*

##### 61. Specific part Secured.

A creditor who holds security as to a specified part of his debt, may vote for the assignee with the unsecured creditors on the balance.—*Parkes v. Parkes*, vol. 10, p. 82.

##### 62. Contra.

A creditor of a bankrupt holding a claim wholly or partially secured, may prove the same in bankruptcy, but cannot vote for assignee.—*In re Davis & Son*, vol. 1, p. 120.

##### 63. Contesting Claim does not Exclude at Second Meeting.

The Register having no power to expunge proofs or to reject the claims of secured creditor, he cannot refuse to permit the claimants to vote at a second meeting of creditors, nor can he exclude them from a

dividend.—*Jaycox & Green*, vol. 7, p. 303.

#### 64. Deficiency.

A creditor having security, may prove his claim to an amount exceeding the value of such security, without abandoning the same. He is, however, bound to set forth the value of his security, in order to vote as a creditor, in respect to the overplus proven by him, upon the choice of assignee.—*In re Henry C. Bolton*, vol. 1, p. 370.

#### XXIX. Waiver.

#### 65. Used as Foundation of Proceedings in Bankruptcy.

A creditor who has a lien upon the property of his debtors by virtue of a judgment, etc., filing a petition for adjudication of bankruptcy without reference to such lien, thereby waives and relinquishes the same, and stands before the court as an unsecured creditor.—*Bloss*, vol. 4, p. 147.

#### SEPARATE CLAIM.

See PARTNER,  
PREFERENCE,  
PROOF OF DEBT.

#### 1. Creditors of Different Copartnerships.

An agreement between two traders to unite their stocks in trade as the capital of a partnership to be formed between them, and to convert the separate business debts of either into joint debts of the firm, will not entitle a separate creditor, who has not acceded in any way to the arrangement before bankruptcy, to prove his claim as a joint creditor of the firm against the partnership estate.—*In re Isaacs & Cohn*, vol. 6, p. 92.

#### 2. Preference on Separate Debt.

Where a creditor has several disconnected claims or debts and receives a preference as to a part only of such debts, he may prove without surrender as to the debts on which he has received no preference.

Where a creditor has separate and distinct debts, on which he receives separate and distinct preferences, he may surrender as to some without surrendering as to all, and will be entitled to prove on the debts so surrendered.—*In re D. G. Holland*, vol. 8, p. 190.

#### SERVANTS.

See WAGES.

#### SERVICE OF PAPERS.

See BANKRUPT,  
CASHIER,  
CORPORATION,  
MARSHAL,  
NOTICE,  
SHERIFF.

#### 1. Marshal's Return.

The marshal's return is *prima facie* evidence of due service, but if it appears from its face that due service has not been made the first meeting must be adjourned for proper notice to be given.

The exact language contained in the warrant should be copied by the messenger into the notices to creditors to be served and published, but the Register may disregard all immaterial variance, and omission of the notices of the former residence stated in the warrant.—*Pulver*, vol. 1, p. 47.

#### 2. Witnesses, Marshal need not Serve.

In the courts of the United States it is not necessary that the subpoena, for witnesses, should be served by the marshal.—*Gordon et al. v. Scott et al.*, vol. 2, p. 86.

#### 3. Upon Husband for Wife.

The Register issued an order for the wife of a bankrupt to attend and be examined as a witness, and the order was served upon the husband. The wife failed to attend.

*Held*, That the order was properly issued, and the bankrupt is not entitled to a discharge unless he proves satisfactorily that he could not obtain his wife's attendance.—*In re Van Tuyl*, vol. 2, p. 579.

#### 4. Absence from the District.

The 40th Section of the Bankrupt Act does not intend that if the debtor "cannot be found" within the district where the proceedings are pending, or have been commenced, that the marshal as messenger, even if cognizant of the whereabouts of the debtor without the district, shall then prove absence to effect service. Such service is invalid, and if adjudication of bankruptcy is taken by default on a defective petition and the proof does not show any act of bankruptcy, and the same is defective, the adjudication will be reversed, and the property of the bankrupt, if in the



hands of officers, applied by the court to have custody of the same, will be relinquished, and the petitioning creditor adjudged to pay the costs of the entire proceedings.—*Alabama & Chattanooga R. R. Co. v. Jones*, vol. 5, p. 98.

#### 5. Upon Attorneys.

Objection was raised to the service of a petition of review upon the attorneys for the petitioner in the preceding proceedings, for the reason that upon the adjudication of the corporation their relation of attorney ceased as to petitioning creditors.

The service on the attorneys is sufficient because reasonable notice to counsel is sufficient, and they are still the counsel for petitioning creditor.—*Alabama & Chattanooga R. R. Co. v. Jones*, vol. 5, p. 98.

#### 6. Personal Service without District.

The order to show cause, as required by Section 40 of the Bankrupt Act, may be served personally outside the district in which the petition is filed by any one authorized by the solicitor for the petitioner to make it. This rule is not altered where one or more of several partners file their petition in bankruptcy, in which several members of the partnership refuse to join; and the order to show cause may be served on them outside the territorial jurisdiction of the court, and by a person duly authorized by the solicitor for the petitioner.—*Stuart v. Hines*, vol. 6, p. 416.

#### 7. Subpoena must be Served at the Actual Place of Abode.

A subpoena to appear and answer, a bill in equity cannot be served at the last place of abode as in the case of an order to show cause under Section 40 of the Bankrupt Act, or at the last usual place of abode as in Form No. 57 in bankruptcy, but must be left at the existing present dwelling house, or the existing, present, usual, customary place of abode of the defendant.—*Hyslop, Assignee, v. Hoppock et al.*, vol. 6, p. 552.

#### 8. By Publication.

Service of a copy of the order of adjudication by publication is a right or privilege personal to the bankrupt, and the delay in such service should not retard the general course of proceedings. If a marshal undertakes the service of the warrant, the service of the order of adjudication by him is a necessary incident to that duty.

The return may be made wholly on the warrant, or separately on the warrant and order of adjudication.—*In re Kennedy & Mackintosh*, vol. 7, p. 387.

#### 9. Of Petition Insufficient when.

The service in this case, made in the manner set out, held sufficient, viz.: The person serving it went to the dwelling house, which was the last usual place of abode of Derby, the alleged bankrupt, in this district, and rang the door-bell; a woman of mature age came to the door, who appeared to be and acted as if she was the mistress of the house; the person inquired for Derby by his full name; she answered that he was not in, and declined to give any further information concerning him. The person then left with her a copy of the petition and the order, and stated to her that they were for Derby.—*In re Derby*, vol. 8, p. 106.

#### 10. Subpoena—Service by Marshal Outside of his District.

There is nothing in the General Orders in bankruptcy, or in the rules in equity prescribed by the Supreme Court, which authorizes a marshal to serve a subpoena to appear and answer in an equity suit at a place outside of the territorial limit of the district for which he is appointed. Service of subpoena and injunction set aside for irregularity.—*Jobbins v. Montague et al.*, vol. 6, p. 117.

#### SET-OFF.

See ADJUDICATION,  
ASSETS,  
ASSIGNEE,  
COUNTER CLAIM,  
DAMAGES,  
DEBT,  
MUTUAL DEBTS,  
PROOF OF DEBT.

#### 1. Unliquidated Damages.

A claim for unliquidated damages by way of set-off should be properly included in the schedule of bankrupt's assets, and should be wholly disregarded in the proceedings for choosing an assignee.—*Orne*, vol. 1, p. 57.

#### 2. Non-provable Debt.

A creditor may be entitled to the set-off, notwithstanding proof of his claim therefor against the estate had been stricken out in proceedings before the Register, as



not being a provable debt.—*Catlin, Assignee, v. Foster*, vol. 3, p. 540.

### 3. Claim under Policy of Insurance.

A claim for loss under an insurance policy may be set off by the insured against his indebtedness to the company.

Such claims constitute mutual debts or credits within the meaning of the 20th Section of the Bankrupt Act.

The rights of the parties are to be determined by the state of facts at the time of the loss.

Though such set-off gives the complainant a preference, it results from the business relations of the parties as they stood at the time of the loss.

If his indebtedness is not due, and the company is bankrupt, a bill in equity will lie to establish the set-off.—*Drake v. Rollo, Assignee, etc., of the Merchants' Insurance Company*, vol. 4, p. 689.

### 4. Claim against Insolvent Insurance Company.

The assignee of a claim against an insolvent insurance company for loss under its policies, assigned after notice of insolvency, cannot set it off against his previous indebtedness to the company.

The debts and credits are not mutual under the 20th Section of the Bankrupt Act.

Such a set-off would be unjust and inequitable.

Though courts of equity follow the law in allowing or refusing set-off, special circumstances may control the equity.

An assignee of a claim seeking to establish a set-off, should show, not merely that he is the nominal owner of the claim, but that he has good equitable grounds for relief.—*Hitchcock v. Rollo, Assignee, etc.*, vol. 4, p. 691.

### 5. Assignment to Debtor of Insolvent.

A creditor of an insolvent who has reasonable ground to believe him to be such, can (prior to petition filed) assign his demand to a debtor of the insolvent whose debt is not yet payable, so as to enable the latter to offset the demand so assigned to him against the debt due from him to the insolvent, the latter debt having become due and payable at the time the offset is claimed.—*In re City Bank of Savings, Loan, and Discount*, vol. 6, p. 71.

### 6. Protested Draft. Deposit in Bank.

A bank has the right, under the Bankrupt Law, to set off the amount of a protested draft against the deposit of an insolvent debtor; hence, when the amount of such draft exceeds the amount of the deposit, the assignee in bankruptcy is not entitled to the deposit, or any part of it.—*In re Petrie et al.*, vol. 7, p. 332.

### 7. Trust Funds. Ordinary Claim.

Under Acts authorizing corporations to organize upon payment of a certain proportion, say ten per cent., of the capital subscribed, in cash, and the balance in notes duly secured, the amount so due by a stockholder on these notes is in the nature of a trust fund, pledged to the creditors of the company, and a Court of Bankruptcy will not allow him to set off against such trust indebtedness an ordinary claim (as a loss on a policy in an insurance company) due him by the company.

A treasurer of a company is a trustee of the money of the company received by him as treasurer, and cannot set off against the amount due by him for such funds a claim against the company of ordinary debt, as a loss on a policy in an insurance company.—*Scammon v. Kimball, Assignee*, vol. 8, p. 337.

### 8. Special Account.

Where a creditor of a bankrupt, knowing him to be in failing circumstances, agrees to open a new account, irrespective of the old indebtedness, and to account for the proceeds of goods sent him for sale, by turning over the cash or notes received therefor, the creditor cannot, after the petition is filed, set off the amount due by him on the new account against the amount due him on the old account.—*In re Troy Woolen Company*, vol. 8, p. 412.

### 9. Section 20 of Act does not Enlarge Doctrine of.

Section 20 of the Bankrupt Act was not intended to enlarge the doctrine of set-off beyond what the principles of legal or equitable set-off previously authorized.—*Sawyer et al. v. Hoag et al.*, vol. 9, p. 145.

### 10. Claim of Joint Creditors. Debt Due by One.

A debtor who owes a debt to several creditors jointly cannot discharge it by setting up a claim which he has against one

of three creditors, for the others have no concern with his claim and cannot be affected by it; nor can one of several joint creditors, who is sued by the common debtor for a separate debt, set off the joint demand in discharge of his own debt, for he has no right thus to appropriate it.—*Gray v. Rollo*, vol. 9, p. 337.

#### 11. Debt of one Insolvent Purchased by his Debtor.

A debt of one insolvent, purchased by his debtor, immediately prior to the filing of a petition in bankruptcy, and purchased in order to set the same off against his indebtedness, is protected by the Bankrupt Act; it only forbids the set off of claims purchased after the petition is filed.—*Hovey et al. v. Home Insurance Co.*, vol. 10, p. 224.

### SETTING ASIDE CONVEYANCES, &C.

See ADJUDICATION,  
CONVEYANCES,  
COST AND FEES,  
DEED,  
DISCHARGE,  
FRAUD,  
JUDGMENT,  
LIEN,  
PROOF OF DEBT,  
SECURITY.

#### 1. Adjudication.

Any creditor, whether he has proved his debt in bankruptcy or not, may move to set aside an adjudication of his debtor as a bankrupt, whenever such adjudication injuriously affects his interest. — *Derby*, vol. 8, p. 106.

#### 2. Conveyance.

The District Court has jurisdiction of a bill in equity by an assignee in bankruptcy to set aside a conveyance of land alleged to be fraudulent as to creditors, although there may be a concurrent remedy at law.—*Pratt jr. v. Curtis, et al.*, vol. 6, p. 139.

#### 3. Idem.

An assignee in bankruptcy may set aside any conveyance or fraudulent transfer, that but for the Bankrupt Act might have been set aside by creditors after having obtained judgment.—*Smith v. Ely et al.*, vol. 10, p. 554.

#### 4. Deed.

When a deed fraudulent as to prior creditors of the grantor is set aside, all

creditors, prior and subsequent, share in the fund *pro rata*.—*Smith, Assignee, v. Kehr et al.*, vol. 7, p. 97.

#### 5. Default.

Creditor of B. files a petition against him asking his adjudication in voluntary bankruptcy. The order to show cause was served on him, and on his default to answer he was adjudged a bankrupt, and after the appointment of an assignee, the property of B. was turned over to him, but no distribution among the creditors was ever made.

Some time thereafter, B. comes into court with a petition, supported by affidavits, showing that he was *non compos mentis* at the time the debts of the petitioning creditors were created, as well as at the time of the institution of proceedings and the adjudication, and until a very recent period.

*Held*, That under the above state of facts, the application to set aside the default and subsequent adjudication should be granted, and B. now allowed to show cause why he should not be adjudged a bankrupt.—*In re Alonso Murphy*, vol. 10, p. 48.

#### 6. Proceedings. Laches in Applying.

Where a person authorized, appears as an attorney for an individual corporation, in answer to a rule to show cause, and waives important rights of the alleged bankrupt, as admitting the allegations of the petition, the proceedings in bankruptcy may be set aside upon the application of such alleged bankrupt. But this motion must be made within a reasonable time after notice thereof, or it will be held waived, and the authority of the attorney, by such silence, ratified.

Where stockholders of an insolvent insurance company, under the above circumstances, wait six months—until several hundred thousand dollars of assets have been collected and is ready for distribution—and they are themselves sued for their *pro rata* of unpaid stock,

*Held*, They have been guilty of laches and will not be heard.—*In re Republic Insurance Company*, vol. 8, p. 317.

#### 7. Release.

A Bankruptcy Court, after a stipulation of discontinuance, has no power to set aside a release given by the bankrupt to

the assignee to carry out a settlement made out of court; a stipulation for the absolute discontinuance of the proceedings would furnish no defense to an action in a State court, as it is the release, and not the stipulation, which must be avoided by proceedings in that court.—*Bieler*, vol. 7, p. 552.

**8. Sale. In Bulk.**

The assignee in bankruptcy of a manufacturing corporation having sold at auction, in one parcel, for a greatly inadequate price, two separate mills, each completely furnished with machinery, a hotel, a store, twenty dwelling houses, each susceptible of separate occupation, and sundry vacant lots not necessary to the use of the mills, subject to a mortgage on the whole; and the property having been purchased at such sale by a combination of certain creditors of the corporation, while other creditors were ignorant of the time and place, and even of the fact of the contemplated sale; and such ignorance was known and acted upon by the agent for the purchasing combination, the sale was set aside on the application of such other creditors.

The facts that such other creditors had not made formal proof of their debts, and even that the claim of such other creditors was disputed, was held to be of no importance on such application.

Provisions proper in the order for a resale suggested.

The creditors who applied to set aside the sale, having, in such application, offered to bid, on a resale, a specified sum more for the property than it was sold for, were held to be bound to fulfill their offer. *In re The Troy Woolen Co.*, vol. 4, p. 629.

**9. Idem.**

A foreclosure sale against property of a bankrupt taking place in the State Court by permission of the Bankrupt court, cannot be afterwards set aside by an assignee in bankruptcy, and the purchaser at such sale will be compelled to take title.—*Lenihan v. Haman et al.*, vol. 8, p. 557.

**10. Idem. Discretion.**

An order directing the sale of property incumbered with valid lien exceeding the value of the property, is not void for want of jurisdiction in the court granting it, but will be set aside on petition for review, as an improper exercise of the discretion

granted the District Court.—*In re Geo. W. Dillard*, vol. 9, p. 8.

**11. Stipulation.**

The District Court will set aside a stipulation of discontinuance upon satisfactory proof that it was obtained by fraud or given improperly under a mistake of fact.—*In re Francis J. Bieler*, vol. 7, p. 552.

**12. Verdict.**

Where a debtor denied the alleged acts of bankruptcy and demanded a jury trial, and upon such trial the jury found the facts alleged in the petition were untrue,

*Held*, The District Court has the same power over verdicts rendered in such cases as courts of common law, and may, on proper cause shown, set them aside and order a new trial.—*In re R. A. De Forest*, vol. 9, p. 278.

SETTLEMENT ON WIFE.

See FRAUD,

HUSBAND AND WIFE,  
MARRIED WOMAN,  
WIFE.

**1. Retaining Ample Assets to pay Debts.**

A husband may make a settlement of property on his wife when he is solvent and pecuniarily in a condition to make such a gift, if it is not unreasonable in amount, and if, after making it, he still has abundant assets to pay those debts which he owed at that time.—*Sedgwick, Assignee, v. Place et al.*, vol. 5, p. 168.

**2. About to Engage in Hazardous Enterprise.**

A person about to engage in a new business may not, with a view thereto and for the purpose of securing his property for the benefit of himself and his family, in the event of losses occurring in such new business, convey such property to his wife voluntarily, without consideration. Such a conveyance is fraudulent and void as to subsequent creditors.

It must be so declared, notwithstanding it be distinctly found that the conveyance was made without any intent to defraud creditors then existing.—*Case v. Phelps et al.*, vol. 5, p. 452.

**3. Failure of Consideration.**

Where, upon an agreement for a separation between husband and wife, the husband makes a settlement upon the wife,

and she, through a trustee, consents to relinquish her dower, and to indemnify the husband against her debts, the deed is for a consideration valuable in law, and will be good as against creditors; but if the parties come together and set aside the articles of separation, although stipulating that the settlement shall stand, the consideration of the deed ceases to be valuable, and becomes voluntary, and, as against creditors, will be void.—*Smith, Assignee, v. Kehr et al.*, vol. 7, p. 97.

#### 4. As an Anchor to Windward.

Where one is engaged in hazardous business, makes a settlement upon his wife, as an anchor to protect his family in case of insolvency, and is, at the time, though solvent, weak and unsteady in his pecuniary matters, the settlement is fraudulent and may be set aside.

Where one commences (as by buying a lot) a settlement on his wife with an honest intent, but continues (as by building a house and furnishing it) the same project with a fraudulent intent, the whole will be set aside.

Where a man makes a settlement upon his wife in fraud of his creditors, and his wife mortgages this property for value to one ignorant of the fraud, though the settlement may be afterwards set aside, the mortgagee's rights will be protected.—*John Sedgwick v. James K. Place et al.*, vol. 10, p. 28.

#### 5. Separation and Reconciliation.

M. and his wife made an agreement of separation, whereby M. agreed to pay S., as trustee for his wife, the sum of seven thousand dollars in full satisfaction of any claim for maintenance or support, and also for any claim for alimony or dower in case of the death of M. Two thousand dollars was paid in money; the balance in two notes of two thousand five hundred dollars each, was secured to be paid by deed of trust on M.'s real estate. Shortly thereafter M. and his wife became reconciled, and rescinded the agreement of separation except in the matter of the separate estate.

*Held*, That all the elements of value which entered into the composition of the first agreement ceased to exist when the parties became reconciled.—*Kehr v. Smith*, vol. 10, p. 49.

#### 6. Lets in Subsequent Creditors.

Where a deed is set aside as void as to existing creditors, all the creditors, prior and subsequent, share in the fund *pro rata*.—*Kehr v. Smith*, vol. 10, p. 49.

#### SHERIFF.

See ASSIGNEE.  
COURTS,  
EXEMPTION,  
FRAUD,  
INJUNCTION,  
NOTICE,  
PAYMENT,  
PETITION.

#### 1. Levy Previous to Adjudication.

Judgment was recovered, execution issued, and levy made by sheriff on the debtor's goods previously attached at the commencement of the suit. Debtor was subsequently adjudicated a bankrupt on petition of creditors.

*Held*, That the lien of the judgment creditors was good, and that the sheriff should apply the proceeds in satisfaction of the judgment, including his fees and charges therein.—*In re Henry Bernstein*, vol. 1, p. 199.

#### 2. Fees for Taking Care of Bankrupt's Property.

A sheriff is entitled to the expenses incurred by him in keeping property of a bankrupt from the time of filing the petition until taken possession of by an assignee in bankruptcy, where seized by him prior to the commencement of proceedings in bankruptcy, on attachment or *mesne* process, which by said proceedings became and was in law dissolved.

For the cost of the attachment proceedings outside of that expended in the protection and care of the property delivered to the assignee, the sheriff can only recover of the party employing him.—*Zeiber v. Hill*, vol. 8, p. 239.

#### 3. Attachment within Four Months.

Where property of a bankrupt is seized by a sheriff on *mesne* attachment within four months prior to commencement of proceedings in bankruptcy, and immediately sold by him as perishable property; if, after proceedings are commenced in bankruptcy, he pays the money over to the execution-creditor in satisfaction of a judgment obtained and execution issued on the

debt, for the security of which the attachment was issued, he will be liable to pay the money again to any assignee who may be appointed in the proceedings in bankruptcy, notwithstanding that the payment made to the execution-creditor was made in ignorance of proceedings having been commenced in bankruptcy against the debtor.—*Miller v. O'Brien*, vol. 9, p. 26.

#### 4. Execution after Commencement of Proceedings.

A pledgee's right to dispose of the property pledged, is suspended from the filing of the petition in bankruptcy of the pledgor until the appointment of an assignee; in the same manner as if the pledgor had died intestate, the pledgee must wait for representatives to be appointed.

A sheriff levying on the bankrupt's property after commencement of proceedings, and selling the same, paying over proceeds to execution creditor, with no actual notice that bankruptcy proceedings had ever been commenced, may still be compelled to account to the assignee in bankruptcy, when appointed, for the proceeds of the goods so sold and paid over.—*Grinnell & Co.*, vol. 9, p. 29.

#### 5. Injunction after Levy Made.

Where a sheriff, on an execution from the State court, on the 21st of November, collected from the defendant the amount due on a *fi. fa.*, and was, eight days afterwards, by an injunction from the United States District Court, wherein proceedings were commenced on that day in bankruptcy against the debtor, enjoined from interfering with or disposing of the "bankrupt's property,"

*Held*, This injunction was a sufficient answer for the sheriff to make to an order from the plaintiff requiring him to pay over the money.—*Mills et al. v. Davis et al.*, vol. 10, p. 840.

#### 6. Deed.

The assignee in bankruptcy has no greater right than a judgment-creditor, and although a sheriff's deed may be given as a mere cover, yet if his grantee convey such property to a *bona fide* purchaser without notice, for value, that deed will be protected.—*Beall v. Harrell et al.*, vol. 7, p. 400.

#### 7. Poundage.

A sheriff is entitled to poundage on a levy at the time he makes the levy.—*In re Black & Secor*, vol. 2, p. 171.

#### SIX MONTHS.

See ASSIGNMENT,  
ATTACHMENT,  
FOUR AND SIX MONTHS,  
FRAUD,  
PREFERENCE.

#### SLAVES.

See WAR.

#### Contracts for Sale.

Contracts for the sale and purchase of slaves are against sound morals, natural justice and right, and have no validity unless sanctioned by positive law.

A remedy on such contracts may exist by virtue of the positive law under which they were made, but such remedy can only be enforced so long as that law remains in force.

Article XIII. of Amendment to the Constitution of the United States repealed all laws sanctioning slavery, and the traffic in slaves and the right of action on slave contracts does not survive such repeal, founded as it is on the supreme authority of the people of the United States.

The rule that statutes should not receive an interpretation that will give them a retrospective operation, so as to divest vested rights of property, and perfect rights of action, has no application, so far as relates to slave and slave contracts, in the construction of Article XIII. of Amendment of the Constitution of the United States.—*Buckner v. Street*, vol. 7, p. 255.

#### SPECIFICATIONS.

See AMENDMENT,  
DISCHARGE,  
ESTOPPEL,  
EVIDENCE,  
FRAUD,  
PLEADING,  
TRIAL.

#### 1. Omission from Schedule — of False Swearing.

A specification in opposition to a bankrupt's discharge which avers that he has property which he has omitted from his



schedule, and has been guilty of negligence in delivering to the assignee property belonging to him at the time of the filing of his petition, is specific enough to be triable; likewise a specification averring willful false swearing to his schedules on the part of the bankrupt.—*In re Robert C. Rathbone*, vol. 1, p. 324.

## 2. Time of Filing.

The ten days, within which specifications in opposition to the discharge of a bankrupt must be filed, date from the adjourned day of the hearing of the order to show cause; and not from the day first appointed.—*In re Darius Tallman*, vol. 1, p. 540.

## 3. Burden of Proof on Creditor Filing Specification.

Where specifications are filed in opposition to the discharge of a bankrupt, the burden of proof is on the creditor, and when he fails to show just cause for refusing a discharge, it must be granted.—*In re O'Kell*, vol. 2, p. 105.

## 4. Creditors Bound by.

Where specification charges that a particular debt was paid after the passage of Bankrupt Act, and the proof shows that it was paid before, and proof is offered that there were other debts not mentioned in specifications that were paid after passage of said Act,

*Held*, That the creditors are bound by the specification, and such proof is inadmissible.—*In re Rosenfeld*, vol. 2, p. 117.

## 5. Vague and General.

Vague and general specifications filed in opposition to discharge are insufficient, and a discharge will be granted when the Register shall have certified conformity to the requirements of the law.—*In re Tyrrel*, vol. 2, p. 200.

## 6. Idem.

Vague and general specifications reciting fraud, etc., will not be allowed in opposition to discharge.—*In re Hansen*, vol. 2, p. 211.

## 7. Time for Filing.

A creditor, as assignee of a note of the bankrupt secured by a deed of trust on land, cannot come in and oppose discharge of the bankrupt unless he shall have entered his opposition and filed his specifications within the proper time and according to rule.—*In re W. C. McVey*, vol. 2, p. 257.

## 8. Must be Specific.

Specifications in opposition to the discharge of a bankrupt must be specific, but if a creditor desires to amend where they are too vague, or take further testimony in support thereof, he may do so.—*In re William D. Hill*, vol. 1, p. 275.

## 9. Debt Created in Fiduciary Relation.

On a specification in opposition to a discharge, setting forth that a debt due by bankrupts was created while they were acting in a fiduciary character,

*Held*, That this fact was no ground for withholding a discharge.—*In re William W. Tracy, James Wilson, Thomas J. Strong, and Joseph U. Orvis*, vol. 2, p. 298.

## 10. Must be Specific.

The specifications of the grounds of opposition to the discharge of a bankrupt must be distinct, precise, and specific, so that he may be apprised as to what facts he must be prepared to meet and resist.—*In re Robert C. Rathbone*, vol. 1, p. 294.

## 11. Vagueness.

Where the allegations in specifications filed in opposition to the bankrupt's discharge are too vague and indefinite to be triable, the case stands as though there was no opposition, and no specifications filed, and if the bankrupt has in all things conformed to his duty under the Act, a discharge must be granted to him.—*Nathan A. Son*, vol. 1, p. 810.

## 12. Certificate of Register when there is Opposition to Discharge.

The Register is to certify conformity or non-conformity, on presentation to him by the bankrupt of the oath required by Section 29; and where there be specifications in opposition to the discharge, the Register may certify conformity, except in the particulars covered by the specifications.—*Re Eugene Pulver*, vol. 2, p. 313.

## 13. Concealed Property. Specification in Opposition to Discharge.

Where specifications in opposition to the discharge of the bankrupt set forth that he had concealed property in the hands of his brother, and the only evidence in support thereof being the testimony of the bankrupt and his brother, from which badges and indicia of fraud were deduced, and not overborne by the positive testimony,



*Held*, That the specifications were sustained and discharge refused.—*In re Goodridge*, vol. 2, p. 324.

#### 14. Omission to File Specifications.

In a proper case, where the omission to file specifications in opposition to the discharge, within ten days after the return day to show cause, was inadvertent, creditors may file same with permission, *nunc pro tunc*. *In re Grefe*, vol. 2, p. 329.

#### 15. Withdrawal of Specifications. Oath of Bankrupt.

Where a bankrupt's oath is made, as required by the 29th Section, and a creditor opposes the discharge with specifications, but subsequently withdraws the same,

*Held*, That the bankrupt should take and subscribe the oath after the withdrawal of the specifications. — *In re Machad*, vol. 2, p. 352.

#### 16. False Swearing.

Where one Coit, a creditor, opposed the discharge of bankrupts in a specification of twenty subdivisions, charging false swearing by the bankrupts on material matters before the Register, and concealment of assets, none of which allegations were sustained,

*Held*, That the discharge be granted, and a decree entered that bankrupt recover from the creditor the costs, to be taxed, of resisting the opposition of their discharge. *Robinson & Chamberlain*, vol. 3, p. 70.

#### 17. Pleading.

Specifications referring to facts supposed to be shown on an examination of bankrupt *held* to be faulty.

Specifications opposing a discharge must be precise and definite and must particularize facts, description of the grounds of opposition, setting forth time place, person, etc.

Facts relied upon in opposing discharge should be set forth alone, without reference to any matter *aliunde*. *Eidom*, vol. 3, p. 105.

#### 18. By Person whose Debt is Barred.

A person not a creditor at the time of alleged removal of property, or whose claim was barred by limitation at the time of such removal, cannot be heard in objection to discharge.—*Burk*, vol. 3, p. 296.

#### 19. False Swearing.

A specification in opposition to a discharge to conform to the requirements of Section 29 of said Bankrupt Act, must allege willful false swearing as well as willful omission from the schedule. — *In re Keefer*, vol. 4, p. 389.

#### 20. Proof Limited by.

Creditors moving to set aside the discharge, may not prove at the trial acts of the bankrupt not set forth in the specifications.—*Tenny & Gregory v. Collins*, vol. 4, p. 477.

#### 21. Strictness of Common Law Pleading not Required.

It is not necessary to state in specifications that the persons named to whom fraudulent payments are stated to have been made, were creditors of the bankrupt.

The strictness of common law pleading is not required in creditors' specifications, but the bankrupt is entitled to such particularity of statement as will give him reasonable notice of what is expected to be proven against him.—*In re Smith & Bickford*, vol. 5, p. 20.

#### 22. Discretion of Court in Trial of.

Creditors opposing the discharge may file a specification in writing of the grounds of their opposition, when the court is authorized, *in its discretion*, to postpone the question of fact, to be tried at a stated session of the court. The Bankrupt Act contains no provision for a jury trial on the question of discharge, and the only power vested in the Circuit Court to review and revise the decision of the District Court made in granting or refusing such a discharge is that conferred by the first clause of the 2d Section of that Act.—*Coit v. Robinson*, vol. 9, p. 282.

### SPIRITUOUS LIQUORS.

See PROOF OF DEBT.

#### 1. In Michigan, Note for.

A debt contracted in whole or in part for spirituous liquors, being in violation of the laws of Michigan, must be rejected, and the name of the claimant stricken from the list of creditors of the estate of the bankrupt.—*In re S. Paddock*, vol. 6, p. 132.

**2. Idem. Valid in Part.**

A note was given in settlement of a balance due upon a previous account for spirituous and intoxicating liquors, part of the consideration of which was based upon the sale of liquors in original packages. There was also another note given for liquors bought in Massachusetts.

*Held*, That as to the part of the first note, which was based upon the sale of liquors in original packages, it was not in violation of the laws of Michigan, and was valid; but as to the balance, there was nothing to take it out of the statutes of the State prohibiting the sale of spirituous and intoxicating liquors.—*In re Richard, Mary & S. R. Town et al.*, vol. 8, p. 38.

**STAMP DUTY.**

See LEGAL PROCESS,  
POWER OF ATTORNEY.

A power to represent a creditor in bankruptcy is not subject to stamp duty by existing laws.—*Myrick*, vol. 3, p. 156.

**STATE INSOLVENT LAWS.**

See APPEAL,  
ASSIGNMENT,  
COURTS,  
FRAUD,  
INSOLVENT LAW.

**1. Suspension of all Proceedings in Same Matter.—Pennsylvania.**

The United States Bankrupt Act of 2d March, 1867, as soon as it went into operation, *ipso facto* suspended all action upon future cases arising under the Insolvent Laws of this State, where the Insolvent Laws act upon the same subject-matter, and upon the same persons, as the Bankrupt Act.

The Bankrupt Act suspends all proceedings under the Act of Assembly of July 12, 1842, where the latter Act operates on the same subject-matter, and upon the same persons, as the former.—*The Commonwealth, at the instance of Jas. Millingar, v. Michael O'Hara*, vol. 1, p. 86.

**2. Voluntary Assignment under.**

A voluntary assignment by a debtor

under the Insolvent Law of the State is valid, although the United States Bankrupt Act was in existence, and applicable to the case at the time of the assignment.—*In re George A. Hawkins et al.*, vol. 2, p. 378.

**3. When Bankrupt Act Went into Effect.**

Judgment was rendered against the debtor in a California State court, January, 1866, from payment whereof he claimed to be discharged by virtue of proceedings under the Insolvent Laws of said State, commenced May 1, 1867, and terminated by final decree on July 1, 1867. On appeal from the decision of the court below denying the motion to quash execution upon such judgment,

*Held*, That the Bankrupt Act, so far as it operated to supersede the State Insolvent Laws, did not take effect until June 1, 1867.

The State Insolvent Court acquired rightful jurisdiction of the case on the issue, May 1, 1867, of the order under the State laws staying proceedings of creditors, prior to the operation of the Bankruptcy Act, and its proceedings are valid, and unaffected by that statute.

*Semble*, The State Insolvent Laws were superseded by the Bankruptcy Act, June 1, 1867, and all proceedings thereafter commenced under said Act are null and void.—*Martin v. Berry*, vol. 2, p. 629.

**4. Superseded by Act of March 2, 1867. Parties Residing in Same State.**

The Act of Congress passed March 2, 1867, supersedes the State Insolvent Laws, even where the plaintiff and defendant are both citizens of the same State; hence, a discharge under the Insolvent Laws of a State is no defense to an action brought to recover an amount stated to be due on open account.—*Cassard et al. v. Kroner*, vol. 4, p. 569.

**5. Not entirely Suspended by Act.**

The Bankrupt Act of 1867 does not wholly supersede or suspend the State Insolvent Laws, but jurisdiction can be exercised thereunder until their authority is called in question by the Bankruptcy Courts.—*Reed Bros. & Co. v. Taylor et al.*, vol. 4, p. 710.

STATUTE OF FRAUDS.

**Promise to Pay Debtor's Debt.**

A promise to A, made on a new consideration, to pay the debt which he owes to B, is not within the Statute of Frauds.—*Phelps v. A. B. & C. L. Clasen*, vol. 3, p. 87.

STATUTE OF LIMITATION.

See LIMITATION,  
PROOF OF DEBT.

**1. Debt Barred by, not Provable.**

Objection to the proof of a debt on the ground that it appears on its face that the Statute of Limitations, if set up, would bar it, is not tenable.—*In re Wm. H. Knoepfel*, vol. 1, p. 70.

**2. Contra.**

A debt barred by the Statute of Limitations of the State where the bankrupt resides, cannot be proved against his estate in bankruptcy.—*In re Daniel P. Kingsley*, vol. 1, p. 329.

STAY OF PROCEEDINGS.

See COURTS,  
DISCHARGE,  
INJUNCTION,  
JUDGMENT,  
PRACTICE.

STAY OF PROCEEDINGS—

- I. *Appeal*, p. 637.
- II. *Assignee*, p. 637.
- III. *Bankrupt's Property*, p. 637.
- IV. *Corporation*, p. 638.
- V. *Discharge*, p. 638.
- VI. *Dividends*, p. 638.
- VII. *Execution*, p. 638.
- VIII. *Fraudulent Debt*, p. 639.
- IX. *Judgment*, p. 639.
- X. *Jurisdiction*, p. 639.
- XI. *Lien Creditor*, p. 639.
- XII. *Leave to Sue*, p. 640.
- XIII. *Suits in State Court*, p. 640.
- XIV. *Supplementary Proceedings*, p. 641.

I. *Appeal*.

**1. Pending Discharge.**

Judgment was obtained in a State court, upon a debt provable in bankruptcy, against a debtor who appealed therefrom, and thereafter petitioned and was adjudi-

cated a bankrupt. Bankrupt applied for injunction to restrain judgment-creditors in the premises, and it was granted.—*In re Benjamin F. Metcalf & Samuel Duncan*, vol. 1, p. 201.

**2. Not by Adjudication Pending a.**

The filing in the appellate court of an adjudication of the bankruptcy of the defendant, rendered by the Register of the United States District Court, after the appeal is taken, will not have the effect to stay the proceedings on the appeal.—*Merritt v. Glidden et al.*, vol. 5, p. 157.

**3. Allowance of, Relates back and Entitles to.**

Where a party appeals from the decision of the United States Circuit Court to the United States Supreme Court, the allowance of the appeal is to relate back to the time when the original application was made for an appeal to the judge of the Circuit Court, and entitles a party to a stay of proceedings.

Decreed that all orders in the above entitled cause made by the Circuit or District Courts since the date of the injunction granted by the Circuit judge, be vacated and annulled, and it is ordered that all things be restored to the condition in which they stood at the date of said injunction.—*Thornhill et al. v. Bank of Louisiana; Williams v. Bank of Louisiana*, vol. 5, p. 377.

II. *Assignee*.

**4. Restraining Suit.**

Court will only restrain an assignee from suing where a *clear* case is made out, of the assignee *exceeding his power or using it unreasonably*.—*In re Penn et al.*, vol. 8, p. 93.

III. *Bankrupt's Property*.

**5. Pending Adjudication.**

By injunction, United States court may restrain bankrupt and other parties from disposing of the bankrupt's property until the further order of the court.—*In re Camp*, vol. 1, p. 242.

**6. Mere Pendency of Proceedings Insufficient.**

Proceedings in an action in a State court will not be stayed simply on the ground that the plaintiffs have taken proceedings

to have defendants declared involuntary bankrupts.

In such case an order of the Court of Bankruptcy, adjudging the defendants bankrupts, must be made before they are entitled to a stay of proceedings in the State court.—*Maxwell et al. v. Faxon et al.*, vol. 4, p. 210.

#### IV. Corporation.

##### 7. Bill to Wind up in State Court.

A depositor in savings bank filed a bill to have the bank wound up under the State laws. The bank was soon after adjudicated bankrupt.

*Held*, The Bankrupt Court had jurisdiction to restrain the prosecution of the depositor's bill in the State court, though commenced prior to the filing of the petition in bankruptcy.—*In re Citizens' Savings Bank*, vol. 9, p. 152.

##### 8. Effect of, upon Judgment against.

The effect of granting a stay upon a judgment against a corporation before execution returned, or setting aside an execution issued thereon, the stockholders of which are personally responsible, will be to discharge "a person or officer or member thereof" where such liability must be predicated of such judgment, and execution returned unsatisfied. Hence, a motion on the part of the defendants to stay proceedings after judgment must be denied.—*Sarah O. Allen, Administratrix, etc., v. The Soldiers' Business Messenger and Dispatch Co.*, vol. 4, p. 537.

#### V. Discharge.

##### 9. Unreasonable Delay in Applying for.

A filed his petition in bankruptcy on the 30th day of October, 1869, and on the 12th day of May, 1870, filed his application for a discharge. On the 15th of June, 1871, B, one of his creditors, commenced an action in a State court to recover for goods delivered to A shortly before the filing of his petition in bankruptcy. A filed an offer in writing to allow judgment to be entered for the amount claimed, with costs, and then presented his petition to the United States District Court of that district, stating that the debt to B arose prior to the filing of his petition in bankruptcy, and that it

was a provable debt, and praying that he might be allowed to take judgment for the amount claimed, and that further proceedings in the action might be stayed to await the determination of the court on the question of his discharge, whereupon an order to that effect was granted. On application of B to discharge the order of stay, on the ground that there had been unreasonable delay on the part of the bankrupt in endeavoring to obtain his discharge,

*Held*, That there had been unreasonable delay for the reason that the bankrupt had, on the 17th day of November, 1870, presented his petition to the Circuit Court, to review a decision of the District Court on questions arising in reference to a discharge, returnable on the 19th, with a stay of proceedings on such decision, and there was no evidence to show why he had not for fourteen months brought the matter to a hearing.—*Belden*, vol. 6, p. 443.

##### 10. Application for Leave to Commence Suit against Bankrupt.

Application for leave to commence a suit against the bankrupt will be entertained and leave granted to begin an action for a debt to which the bankrupt's discharge would not be a bar, if it appears that if not commenced forthwith the Statute of Limitations might run against it, or that service might not be obtained upon the bankrupt afterwards, or that testimony might be lost; and the court will then stay the suit to await the determination of the question of the debtor's discharge or the expiration of a reasonable time to make application therefor. But where no such reasons are offered for leave to commence a suit, the court will deny an application therefor.—*In re Ghirardelli*, vol. 4, p. 164.

#### VI. Dividends.

##### 11. Protest of Bankrupt.

A bankrupt cannot by mere protest made to the assignee, alleging want of jurisdiction in the court, in a case commenced since the first day of December, 1873, and prior to the approval of the late amendments of June, 1874, stop the declaring of a dividend which could be legally declared under the law prior to the amendments.—*In re H. & M. Rosenthal*, vol. 10, p. 191.

VII. *Execution.*12. **Sale of Property under.**

The Bankruptcy Court may, in the exercise of a lawful jurisdiction, restrain by injunction the sale of property under an execution issued from a State court, even before the commencement of proceedings in bankruptcy.—*In re Lady Bryan Mining Co.*, vol. 6, p. 252.

VIII. *Fraudulent Debt.*13. **Order of Arrest.**

The bankrupt having been arrested by order of a State court at the suit of creditors whose debt appeared by the order to have been fraudulently contracted, applied to have said order of arrest vacated by the Bankruptcy Court, and the said creditors, who had subsequently proved the debt in bankruptcy, enjoined from further proceedings thereon.

*Held*, That such debt was one not dischargeable in bankruptcy, and the order of the State court could not be vacated or its proceedings set aside. But that, the debt being provable in bankruptcy, proceedings of the creditors in their suit in the State court would be stayed, until the determination of the bankruptcy on the question of discharge.—*In re Migel*, vol. 2, p. 481.

IX. *Judgment.*14. **Suit Commenced with Knowledge of Insolvency.**

The defendant sued the bankrupt to recover a debt, when he knew, or had reasonable cause to believe his debtor was insolvent. Judgment having been rendered, upon the default of the debtor, who did not appear or answer to the action, the execution-creditor seized the real estate of the debtor which was attached on the writ, and proceeded to complete his levy. After rendition of the judgment, and before the levy was completed, the debtor filed his petition in bankruptcy, and his assignee applied to the Bankrupt Court for an injunction to restrain the defendant from proceeding with his seizure and sale of the estate of the bankrupt on the execution, the attachment being within four months of the commencement of the proceedings in bankruptcy.

*Held*, That the relief prayed for should

be granted, and injunction made perpetual.—*Haskell, Assignee, etc., v. Ingalls*, vol. 5, p. 205.

15. **Judgment Valid under Act.**

Where judgments were obtained in good faith against a bankrupt, and levies, on executions issued under them, were made prior to the filing of his petition in bankruptcy, after which injunctions were granted by the Bankruptcy Court, which, after the lapse of several months, the creditors moved to dissolve, the assignee in bankruptcy having taken no steps in the matter,

*Held*, That as it did not appear that the property levied upon was worth more than the amount of the judgments, nor that a sale by the assignee would realize any more than a sale by the sheriff, and as there was no proof that any advantage would result to any creditor by continuing the injunction, it must be dissolved.—*Jeremiah G. Wilbur*, vol. 3, p. 276.

16. **Idem.**

When a judgment against the bankrupt is valid, the judgment-creditor ought not to be restrained from selling any alleged interest of the bankrupt in the property, on the application of the assignee in bankruptcy, unless the want of such interest is clearly shown to the court. The plaintiff should be allowed to sell and the purchaser can try his title by ejectment.—*Reeser v. Johnson*, vol. 10, p. 467.

X. *Jurisdiction.*17. **District Court of Different District.**

A District Court has no power to grant an injunction to stay proceedings in another court by reason of bankruptcy proceedings, pending in another State, and before another court.—*In re H. A. & J. B. Richardson*, vol. 2, p. 202.

XI. *Lien Creditor.*18. **Application by General Creditors.**

*Quære*, Whether danger of property being sacrificed at forced sale, as an equity can be asserted on behalf of general creditors in any case against a lien creditor without such a payment of his demand as may substitute the assignee in bankruptcy for him as to the lien.—*Ex parte Donaldson*, vol. 1, p. 181.



**19. Jurisdiction of U. S. Court.**

The District Court has jurisdiction to ascertain and liquidate all liens upon the bankrupt's property, and in the exercise of this jurisdiction may enjoin a creditor from enforcing a judgment in a State court against the property of the bankrupt; but after the process of the State court has been executed by a sale of property, the District Court will not interfere.—*Fuller*, vol. 4, p. 116.

**20. Obtained by Collusion.**

The United States District Court has ample power to restrain a claimant of a lien, obtained by collusion with the bankrupt, from proceeding elsewhere to enforce his lien, and this power may be summarily exercised without a formal suit.—*Samson, Assignee, v. Clark & Burton*, vol. 6, p. 403.

**21. Sale under Mortgage.**

An injunction to restrain a mortgagee from making a sale of real estate belonging to a bankrupt will be granted when it appears that the mortgagee made a sale of the property before the adjudication of bankruptcy, but the purchaser, under advice of counsel, declined to make payment and receive deeds therefor, and the sale sought to be enjoined is made under the same terms as before with the appendix, "the above property will be sold for account of whom it may concern."

*Held*, Further, that the words of the appendix, for account of whom it may concern, cannot be construed to affect the assignee and mortgagee.

That this court can rightfully interfere even though it be alleged that the mortgagee will be injured thereby, its right being simply to regulate through the assignee, the modes and means of foreclosing the mortgage.

That the first sale was, in reality, no sale, and hence, from and after the adjudication, the mortgagee's rights and powers to sell were such, and only such, as could be exercised consistently with the provisions of the Bankrupt Law, and under that law the assignee is really the agent both of the mortgagee and the other creditors.—*Whitman, Assignee, v. Butler*, vol. 8, p. 487.

**22. Claimants under Attachment.**

The Bankruptcy Court has the unquestioned power of punishing for contempt

those who interfere with property of a bankrupt in its custody, and hence must have the subsidiary power of restraining persons by an injunction from interfering with such property and then punishing them for contempt if they violate such injunction; the said court has power and jurisdiction, as a part of the proceedings in bankruptcy, to collect all the assets of the bankrupt, by the first Section of said Act, and hence has a right to prevent, by injunction, the claimants of a lien under an attachment from proceeding against the specific property and assets attached; that it is eminently proper that the equitable power of the court should be set in motion by the petitioning creditor, or even by any creditor, either in a voluntary or an involuntary case, before the appointment of an assignee, the action of the court being for the benefit of the creditors generally; parties may be punished for contempt, if there has been no injunction, for interfering with the admitted property of the bankrupt's, by selling it after adjudication, and there can be no well-founded objection to the power of the court to give them warning by injunction in advance, so that they may refrain from committing such contempt.—*In re L. Ulrich et al.* vol. 8, p. 15.

**XII. Leave to Sue.****23. To Prevent Barring by Statute of Limitation.**

Application for leave to commence a suit against the bankrupt will be entertained and leave granted to begin an action for a debt to which the bankrupt's discharge would not be a bar, if it appears that if not commenced forthwith the Statute of Limitations might run against it, or that service might not be obtained upon the bankrupt afterwards, or that testimony might be lost; and the court will then stay the suit to await the determination of the question of the debtor's discharge or the expiration of a reasonable time to make application therefor. But where no such reasons are offered for leave to commence a suit, the court will deny an application therefor.—*In re Ghirardelli*, vol. 4, p. 164.

**XIII. Suits in State Court.****24. To Enforce Fraudulent Agreement.**

Where the United States District Court,



by bill in equity, is prayed to arrest litigation pending in the State court and to hear and determine the controversies involved, and to set aside an agreement that was held to be in fraud of the Bankrupt Act, and an attempted invasion of the rights of the general creditors,

It is the duty of the court to grant some effectual relief against the use of this agreement, and secure to the assignee all the right which the Bankrupt Act confers upon him.—*Sampson v. Burton et al.*, vol. 4, p. 1.

#### 25. By mere Suggestion of Bankruptcy.

Where the declaration of bankruptcy has been suggested and not denied, the plaintiff is estopped from further proceeding with his suit in the absence of an order authorizing it.—*Penny v. Taylor*, vol. 10, p. 201.

#### 26. Judgment-Creditor Proving in Bankruptcy.

Creditors waive all right of action against the bankrupt, on either their judgments or the original indebtedness, by proving their debts in bankruptcy, and all proceedings in such suits must be stayed under the 21st Section of the Bankrupt Act.—*In re Louis Meyers*, vol. 1, p. 581.

#### 27. Where Creditor Proves Claim in Bankruptcy.

A creditor who has proved his debt in the bankruptcy proceedings, cannot maintain an action on the same demand against the bankrupt. His right of action in the State court as well as in the Federal courts is thus waived.

It is the intent of the Bankrupt Act of 1867, that the Federal tribunals shall have exclusive control of the assets of the bankrupt, and shall distribute the proceeds among his creditors.—*John Wilson v. M. Capuro and G. Capuro*, vol. 4, p. 714.

#### 28. Effect of Bankruptcy in Suits in State Courts.

The effect of bankruptcy in suits pending in the State courts is to stay or suspend them. They may, with the leave of the Bankrupt Court, be prosecuted to judgment to ascertain the amount due, but final process to procure satisfaction cannot be issued and executed.—*Allen & Co. v. Montgomery*, vol. 10, p. 504.

#### XIV. Supplementary Proceedings.

##### 29. Proceeding in State Court for Contempt.

The Bankrupt Act does not contemplate a stay of proceedings by injunction on an order to show cause, issued out of a State court, why the bankrupt should not be punished for contempt for his failure to appear for examination on proceedings supplementary to execution.—*Hill*, vol. 2, p. 140.

##### 30. Arrest.

A creditor recovered judgment and execution against a bankrupt in the State court. The bankrupt was subsequently arrested on the execution, and gave a recognizance before a magistrate to appear for examination under the laws of the State for the relief of poor debtors. He appeared, and the examination was continued from time to time. The bankrupt, pending the examination, filed his petition in bankruptcy; an assignee was afterwards chosen. The creditor afterwards filed with the magistrate charges of fraud against the bankrupt, under the statute of the State.

*Held*, That such charges of fraud filed with the magistrate by the judgment-creditor, are not a new suit which should be stayed under the 21st Section of the Bankrupt Act, and that the bankrupt was not entitled to a discharge from arrest.—*Minon v. Van Nostrand et al.*, vol. 4, p. 108.

##### 31. After Discharge.

Under Section 21 of the Bankrupt Law, a bankrupt who has omitted to apply for a stay of proceedings in an action against him, pending the question of his discharge, may nevertheless apply after judgment to have supplementary proceedings against him thereon stayed, on the ground that he has been discharged, if the plaintiff's demand be one affected by the discharge.—*"World" Co. v. Brooks*, vol. 3, p. 588.

#### STOCK.

See ASSIGNEE,  
CORPORATION.  
COURTS.

##### 1. Transfers—Preference.

An *unexecuted* agreement by a company to transfer its stock cannot be construed into an act of bankruptcy.

The issue, at par, of the stock of a railroad company, not heretofore issued in payment of a *bona fide* debt, would not be a fraud on the creditors. If, however, it was owned by the company as paid up stock, lawfully acquired, the transfer thereof to creditors, under such circumstances as would give them an illegal preference, would be an act for which the company could be proceeded against under the Bankrupt Law.—*L. C. Winter v. the Iowa, Minnetona and North Pacific Railway Company*, vol. 7, p. 289.

## 2. Sale of Pledged Stock.

Where stock is pledged to secure call loans, the pledgee need not obtain leave of the court, on the bankruptcy of the pledgor, to sell the stock pledged and pay the surplus into court for the benefit of whom it may concern.—*In re George B. Grinnell*, vol. 9, p. 137.

## 3. Assessments.

Where a charter provided, the "subscribers to the stock of this company shall pay for said stock in manner following: five per cent. down, five per cent. in three months, five per cent. in six months, five per cent. in nine months, the balance being subject to the call of the directors, as they may be instructed by majority of the stockholders represented at any regular meeting." In such case, to maintain an action at law for such balance, there must be a call or assessment, or something standing in the place thereof or equivalent thereto, either by the company or a proper court, to make the stockholder liable.—*Chandler v. Siddle* vol. 10, p. 236.

## 4. Unpaid Subscription.

Unpaid subscriptions to the capital stock of a corporation are assets applicable to the payment of corporate debts which the corporate authorities may call in for corporate purposes.

Primarily the amount due on subscriptions is a debt due to the corporation which it alone can enforce, and, unless the corporation is without other assets to meet its obligations, and fails to meet the needed calls, creditors cannot interpose.

An account should be taken to know what, if any, calls should be made, for the bill by creditors cannot reach beyond the satisfaction of their demands.

An assignee of stock may have paid for it to the assignor and relied on his representations, and those of the officers of the company, that the shares so bought were fully paid for; yet creditors are not bound thereby, and if the stock was not fully paid, the holder is liable to creditors of the company for the amount remaining unpaid.

The assignee in bankruptcy has all the authority of a receiver to collect demands and pay debts, and, under the order of the court appointing him, an assessment may be made on the unpaid shares just as if the same had been ordered by the corporation before bankruptcy.—*Nathaniel Myers, Assignee of St. Louis Soap Company v. F. A. Seeley et al.*, vol. 10, p. 411.

## STOCK-BOARD.

### Sale of Seat in.

Where, by the articles of association of a stock-broker's board, a seat in it, in the event of the insolvency of the member, is required to be disposed of, and the proceeds applied first exclusively to the payment of debts due other members,

In such case, upon the bankruptcy of the broker, his assignee in bankruptcy will only be entitled to the surplus arising from the sale after the other members of the board are paid in full their claims.—*Hyde, Assignee, v. Woods et al.*, vol. 10, p. 54.

## STOCKHOLDER.

See CORPORATION,  
STOCK.

### 1. National Banks.

A bank, organized according to the provisions of the 35th Section of the National Currency Act, has, in order to prevent loss upon a debt previously contracted, a lien upon the share of an individual stockholder, and can apply the same as well to the payment of individual as partnership indebtedness.—*In re Edward Bigelow, David Bigelow, and Nathan Kellogg, composing the firm of E. & D. Bigelow*, vol. 1, p. 667

### 2. Entry on Stock-Book.

A provision in the by-laws of a corporation requiring transfer to be made upon the books may be waived by the company,

and if waived at the request of a purchaser of stock, or with his assent, he becomes directly liable for future assessments.

The entry of his name upon the stock-book as a stockholder may be sufficient to give him the position of a legal stockholder. — *Upton, Assignee, v. Burnham*, vol. 8, p. 221.

### 3. Subscription not Set-Off against Debt.

Under acts authorizing corporations to organize upon payment of a certain proportion, say ten per cent., of the capital subscribed in cash, and the balance in notes duly secured, the amount so due by a stockholder on these notes is in the nature of a trust fund, pledged to the creditors of the company, and a Court of Bankruptcy will not allow him to set-off against such trust indebtedness, an ordinary claim (as a loss on a policy in an insurance company), due him by the company. — *Scammon v. Kimball*, vol. 8, p. 337.

### 4. Idem.

A stockholder indebted to an insolvent corporation for unpaid shares cannot set off against this trust fund for creditors a debt due him by the corporation. The fund arising from such unpaid shares must be equally divided among all the creditors.

The relations of a stockholder to the corporation, and to the public who deal with the latter, are such as to require good faith and fair dealing in every transaction between him and the corporation of which he is part owner and controller, which may injuriously affect the rights of creditors or of the general public, and a rigid scrutiny will be made into all such transactions in the interest of creditors. — *Sawyer et al. v. Hoag, Assignee, et al.*, vol. 9, p. 145.

### 5. Affected by the By-Laws.

Where the by-laws of a bank make the stock of its stockholders subject to all indebtedness of the bank, the bank has a right to enforce this by-law in case of bankruptcy of the stockholder. — *Thomas Morrison*, vol. 10, p. 105.

### 6. Creditor may Pursue Statutory Remedy against.

Where a corporation is bankrupt and the creditor fails to satisfy his judgment from the property of the corporation, he may pursue the remedy given to him by statute

against its stockholders. — *Allen v. Ward*, vol. 10, p. 285.

### 7. Laches in Canceling Stock on Account of Misrepresentation.

That it is too late for a stockholder, after the company has become insolvent, to avoid his liability on the ground that false representations were made to him that no assessment could be made on his stock. — *Upton, Assignee, v. Hasbrough*, vol. 10, p. 368.

### 8. In Corporation De Facto Supported by User.

The assignee in bankruptcy filed a petition in the United States District Court for an order against all the stockholders of a certain corporation to pay in the amount unpaid on the stock held by them respectively, which order was duly granted, and default having been made, the assignee brought suit against the different stockholders for the amount remaining unpaid by each of them.

*Held*, That where papers having color of compliance with the statutes have been filed with the proper State officers, and meet their approval, but are in fact so defective as to be incapable of supporting the corporation as against the State, they are, as against a subscriber to its capital stock, held sufficient to constitute a corporation *de facto*, if supported by proof of user, so that neither the company nor the stockholders can object that it is not a corporation *de facto*.

That this court, after the commencement of proceedings in bankruptcy, became vested with all the powers and control over the assets that were previously vested in the chartered officers of the company, or the stockholders, or both collectively; and could, by virtue of its authority, make or direct any assessment or call necessary or preliminary to the collection of the assets, as fully as the stockholders or directors could do, if the company had not gone into bankruptcy. — *Upton, Assignee, v. Hasbrough*, vol. 10, p. 368.

### 9. Notice of Assessment.

That it was discretionary with the court either to require notice to the stockholders, or not, to pay the balance due upon their stock.

That the stockholders are the *quasi* parties to the bankruptcy proceedings, to such an extent as to be bound by the order with-

out notice. They could have moved to set aside the order or applied for a review in the Circuit Court ; omitting to do this, they are concluded by the order complained of in these suits.—*Upton v. Hasbrough*, vol. 10, p. 368.

#### 10. Subscription a Trust Fund.

Capital stock or shares—especially the unpaid subscription—constitute a trust fund for the benefit of the general creditors of a corporation.

This trust cannot be defeated by a simulated payment of the stock subscription, nor by any device short of an actual payment in good faith.

An arrangement by which the stock is nominally paid, and the money immediately taken back as a loan to the stockholder, is a device to change the debt from a stock debt to a loan, and is not a valid payment as against creditors of the corporation, though it may be good as between the company and the stockholder.—*Sawyer v. Hoag*, vol. 9, p. 145.

#### STRANGER.

See ADJUDICATION,  
COURTS,  
PARTIES,  
SUMMARY PRO-  
CEEDINGS.

#### 1. Cannot Move to Dismiss Petition for Adjudication.

A motion on the part of a creditor who is not a party to the petition, that the proceedings on the petition for adjudication be dismissed, must be denied on the ground that the denials of bankruptcy by debtors are questions solely between the petitioning creditors and the debtors, with which no outside party, sustaining merely the relation of a person who claims to be a creditor of the debtors, can be permitted to interfere.—*Boston, Hartford & Erie R. R. Co.*, vol. 5, p. 232.

#### 2. Cannot be Compelled to Come into Court Except in Plenary Suit.

Strangers to the proceedings in bankruptcy not served with process, and who have not voluntarily appeared and become parties to such litigation, cannot be compelled to come into court under a petition for a rule to show cause, as the third clause of the 2d Section of the said Act affords the

assignee a convenient, constitutional, and sufficient remedy to contest every adverse claim made by any person to any property or rights of property transferable to or vested in such assignee. Cause remanded for further proceedings, in conformity to the opinion of this court.—*Smith v. Mason*, vol. 6, p. 1.

#### STRUGGLING TO KEEP UP.

See PAYMENT,  
PREFERENCE,  
PROCURING PROPERTY  
TO BE TAKEN.

#### SUBPOENA.

See MARSHAL,  
SERVICE OF  
PAPERS,  
WITNESS.

#### 1. For Witness—Marshal need not Serve.

In the courts of the United States it is not necessary that the subpoena for witnesses should be served by the marshal.—*Gordon, McMillan & Co. v. Scott & Allen*, vol. 2, p. 86.

#### 2. Fees and Mileage of Party Serving.

The party who serves a subpoena for witnesses is entitled to recover for service and mileage.—*Gordon, McMillan & Co. v. Scott & Allen*, vol. 2, p. 86.

#### 3. Marshal Cannot Serve beyond his District.

There is nothing in the General Orders in bankruptcy, or in the rules in equity prescribed by the Supreme Court, which authorizes a marshal to serve a subpoena to appear and answer in an equity suit at a place outside of the territorial limit of the district for which he is appointed.—*Jobbins, Assignee, v. Montague et al.*, vol. 6, p. 117.

#### 4. Existing Present Dwelling.

A subpoena to appear and answer a bill in equity cannot be served at the last place of abode, as in the case of an order to show cause under Section 40 of the Bankrupt Act ; or at the last usual place of abode as in Form No. 57 in bankruptcy, but must be left at the existing present dwelling house, or the existing, present, usual, customary place of abode of the defendant. There is no irregularity in making the subpoena returnable on the first Tuesday of the month instead of the first Monday, as the equity

rules provide that the subpoena shall be returnable on a rule day; and that the first Monday of every month shall be a rule day. The spirit of General Order 32 and the equity rules were sufficiently complied with in this case. Motion granted setting aside order *pro confesso*, and denied in respect to setting aside the subpoena. Application to have a receiver appointed denied.—*Hyslop, Assignee, v. Hoppock et al.*, vol. 6, p. 552.

#### 5. Publication.

The service of a subpoena to appear and answer a bill in equity is regulated by an Act of Congress, and, if the defendants do not reside within the district, the District Court has no power to obtain jurisdiction over their persons by any service of process made otherwise than in accordance with Rule 13. Application to have service made by publication or personal service on the son of defendant denied.—*Hyslop, Assignee, v. Hoppock et al.*, vol. 6, p. 557.

### SUBROGATION.

#### Assignee to Judgment-Creditor.

Where a creditor having a judgment against a bankrupt which is a lien upon his real estate proves his debt in bankruptcy, and comes in upon the bankrupt's estate for the whole debt, the assignee in bankruptcy is entitled to be subrogated to the rights of the judgment-creditor as regards its lien upon the real estate.—*Wallace v. Conrad*, vol. 8, p. 41.

### SUBSTITUTION.

See SECURITY.

#### Note and Mortgage for Bonds.

A banker held as a special deposit certain bonds of a customer, and without the customer's knowledge the banker substituted for the bonds left with him a note and mortgage. The banker failed; and the customer, on being notified of the substitution, ratified the act—after the banker's insolvency was notorious, and within thirty days of the filing of the petition against him in bankruptcy. On a bill filed by the assignees in bankruptcy of the banker to recover the note and mortgage substituted,

*Held*, The substitution was valid, it being a mere exchange of property and not calculated in any way to prefer a creditor;

That there is nothing in the Bankrupt Act to forbid one knowing himself to be insolvent, exchanging or selling his property, or otherwise disposing of it at any time previous to the filing of the petition, provided such disposition leaves his estate in as good plight as formerly.—*Cook et al. v. Tullis*, vol. 9, p. 433.

### SUFFERING PROPERTY TO BE TAKEN.

See ACT OF BANKRUPTCY,  
LEGAL PROCESS,  
PROCURING PROPERTY  
TO BE TAKEN.

#### 1. Fictitious Judgment—Prior to Act.

Where judgment, shown to be fictitious, was obtained against debtor prior to the passage of the Bankrupt Act, on which judgment execution was issued and property of the debtor was levied upon after the passage of the Act,

*Held*, That the debtor had procured or suffered his property to be taken by legal process, and had transferred his property with intent to delay, hinder, and defraud his creditors, and had thereby committed acts of bankruptcy.—*In re Julius Schick*, vol. 1, p. 177.

#### 2. By One Member of Firm.

Where a firm is insolvent, it is an act of bankruptcy for a member thereof to suffer its property to be taken on legal process, with intent to give a preference to a creditor of the firm.—*In re Black & Secor*, vol. 1, p. 353.

#### 3. When Insolvent at time of Levy—Voluntary Bankruptcy.

If a firm was insolvent or contemplated insolvency at the time of the levy, and refrained from going into voluntary bankruptcy, it suffered its property to be taken on legal process.—*In re Dibblee et al.*, vol. 2, p. 617.

#### 4. Insolvent must Apply to Bankrupt Court in his own Behalf.

It is the duty of one who is insolvent, to apply to the Bankrupt Court in his own behalf, and if he does not, and some of his creditors take his property under legal process, he may be held to have suffered his property to be taken, and may be adjudged a bankrupt at the instance of



creditors whose claims have not been provided for.—*Wells*, vol. 3, p. 371.

#### 5. Judgment by Default.

A creditor having knowledge of his debtor's insolvency, obtained judgment by default, issued execution, and sheriff levied on his property; other creditors petitioned to have the debtor declared a bankrupt, in thereby having committed an act of bankruptcy. Before trial, bankrupt filed voluntary petition, and thereupon was adjudged bankrupt. The judgment-creditor proved his claim for the full amount of his judgment, less what he would receive from the execution, if that should be deemed a valid payment. Assignee petitioned to have the said judgment set aside and declared void, and that said creditor and the sheriff be ordered to pay over to him, less the sheriff's fees, the amounts they severally held and received upon said execution; and further, that the judgment-creditor's proof of claim be rejected.

*Held*, The bankrupt committed an act of bankruptcy, in so suffering his property to be taken by a creditor on legal process.—*Davidson*, vol. 3, p. 418.

#### 6. Construction of Term.

"Suffer" is different from "procure." "Suffer" implies a passive condition—to allow, to permit; not a demonstrative, active course, like "procure."—*Campbell, Assignee, v. National Bank*, vol. 3, p. 498.

#### 7. Receiver Appointed by State Court Taking Property.

The taking of the property of insolvent traders, by a receiver appointed by a State court, is a taking under legal process, within the meaning of Section 39 of the Bankruptcy Act.

A suspension of payment of his commercial paper by a solvent trader, and non-resumption of such payment within a period of fourteen days, is *per se* fraudulent, and an act of bankruptcy.—*Hardy, Blake & Co. v. Bininger & Co.*, vol. 4, p. 262.

#### 8. Valid Judgment in State Court Avoided when.

Where a judgment is regularly recorded under the laws of a State, and execution and levy has duly followed the entering of a judgment, *even though* prior to the commencement of bankruptcy proceedings, the

same are void if the debtor suffered (not procured) the recovery of the judgment, and the subsequent execution and levy, and the creditor had reasonable cause to believe the debtor insolvent.—*Beattie, Assignee of Morse, v. Gardner et al.*, vol. 4, p. 323.

#### 9. Adverse to Principles of the Act.

Payment of money is a preference; the obtaining of it by legal proceedings, not prevented by the debtor availing himself of the law, is adverse to the fundamental principles of the law, and cannot withstand the claims of other creditors and those of the assignee in bankruptcy.—*Smith v. Buchanan et al.*, vol. 4, p. 397.

#### 10. Mere Passive Non-Resistance in Insolvent is not.

Under a sound construction of Sections 35 and 39 of the Bankrupt Law, something more than passive non-resistance in an insolvent debtor is necessary to invalidate a judgment and levy on his property when the debt is due and he has no defense. In such case there is no legal obligation on the debtor to file a petition in bankruptcy to prevent the judgment and levy, and a failure to do so is not sufficient evidence of an intent to give a preference to the judgment-creditor, or to defeat the operation of the Bankrupt Law.

Though the judgment-creditor in such a case may know the insolvent condition of the debtor, his judgment and levy upon his property are not, therefore, void, and are no violation of the Act.—*Wilson v. City Bank of St. Paul*, vol. 9, p. 97.

### SUITS.

See ARREST,  
ASSIGNEE,  
COURTS,  
FRAUD,  
LIMITATION,  
PRACTICE,  
PROOF OF DEBT,  
STAY OF PROCEEDINGS.

#### 1. Section 21 Applies only to Debts Dischargeable.

The provisions of Section 21, relating to suits against the bankrupt, apply only to a debt which will be discharged by the bankrupt's discharge.—*John S. Wright*, vol. 2, p. 142.



**2. Suits in State Court by Assignee.**

An assignee in bankruptcy may sue in a State court for the enforcement of any right vested in him by the Bankrupt Act, as for the recovery of property transferred in fraud of that Act within the six months prior to commencement of proceedings.

The State court, in passing upon claims of assignees in bankruptcy, is not proceeding under the Bankrupt Act, but simply recognizes the Bankrupt Act as the source of the assignee's title, in the same manner as it would if he derived his title from a deed or a contract.

Sections 1 and 2 of the Bankrupt Act construed, and held not to confer exclusive jurisdiction on the United States courts in suits for the enforcement of rights created by the Bankrupt Act, or for the collection of assets of the bankrupt, but only as to the adjudicating of any one bankrupt.—*Cook v. Waters et al.*, vol. 9, p. 155.

**3. Idem.**

The effect of bankruptcy in suits pending in the State courts, is to stay or suspend them. They may, with the leave of the Bankrupt Court, be prosecuted to judgment to ascertain the amount due, but final process to procure satisfaction cannot be issued and executed.

If there has been a recovery of judgment before bankruptcy, the sheriff may go on and sell, but the Bankrupt Court has the right to cause the sale to be made under its supervision and control.—*Allen & Co. v. Montgomery et al.*, vol. 10, p. 504.

## SUMMARY PROCEEDINGS.

See ASSIGNEE,  
COURTS,  
JURISDICTION,  
PLEADING,  
PRACTICE,  
PROCEEDING IN  
BANKRUPTCY,  
STRANGERS.

**1. Not Conducted on Ex Parte Affidavits.**

Proceedings, though summary and informal, should not be conducted by *ex parte* affidavits, nor otherwise in derogation of the rules of evidence.—*In re Charles E. Beck*, vol. 1, p. 588.

**2. Execution-Creditor upon Fraudulent Confession of Judgment.**

The District Court, instead of issuing an injunction under the summary jurisdiction in bankruptcy to prohibit a creditor from proceeding under an execution issued upon a judgment confessed upon warrant of attorney in fraud of creditors, may refuse to consider the subject unless under a distinct proceeding in equity against such a creditor.—*Irving v. Hughes*, vol. 2, p. 62.

**3. Property Fraudulently Disposed of by Bankrupt.**

Property fraudulently disposed of by a bankrupt in proceedings by or against him, may be recovered by the assignee upon petition in the Bankruptcy Court, proceedings upon which may be of a summary character.—*Bill v. Beckwith et al.*, vol. 2, p. 241.

**4. Agreed Case.**

Section 6 of said Act contains the only provision for the determination of substantial rights by informal or summary proceedings; i. e., where the parties by consent submit to the jurisdiction, and present the issue informally to the court for its decision.—*In re Josiah D. Hunt*, vol. 2, p. 539.

**5. Adverse Party may Waive or Raise Question of Waiver.**

Assignee in bankruptcy petitioned to have an assignment of merchandise by the bankrupt to one K., and a transfer of goods to a firm, S. & Co., set aside as fraudulent preferences. On the appointed day, the parties, by their respective attorneys, entered and filed notice of appearance, and time was given by the court for them to answer. The attorney for S. & Co. thereafter put in an answer, denying the transfer of goods as alleged, and the attorney of K. sought, by notice in writing, filed with the clerk, to withdraw his appearance as having been made by mistake.

*Held*, The question as to the assignee in such a case proceeding by a bill in equity, or in a summary way by petition, is one as to form, which the adverse party, in court by personal service of a notice to appear, or by voluntary appearance, may raise or waive as he chooses. He will be held to waive any objection if he does not raise

the question by demurrer or answer within a proper time.—*Ulrich*, vol. 3, p. 133.

#### 6. Assignee cannot Recover Assets in Hands of Third Party by.

*Held*, Assignee cannot recover assets from third parties by summary proceedings, but must do so by bill in equity or suit at law. Such a case should therefore come up by appeal, and not by petition. Decree of District Court set aside as irregular, with leave for assignee to file bill, without costs.—*Bonesteel*, vol. 8, p. 517.

#### 7. Idem.

Strangers to the proceedings in bankruptcy not served with process and who have not voluntarily appeared and become parties to such a litigation, cannot be compelled to come into court under a petition for a rule to show cause, as the third clause of the 2d Section of the said Act affords the assignee a convenient, constitutional and sufficient remedy to contest every adverse claim made by any person to any property or rights of property transferable to or vested in such assignee.—*Smith v. Mason, Assignee*, vol. 6, p. 1.

#### 8. Sale of Disputed Property.

The United States District Court does not possess the power under the 25th Section of the present Bankrupt Act, to order in a summary way the sale of an estate, real or personal, although the same is claimed by the assignee, even though the title to the same is in dispute, if it also appears that the estate in question is in the actual possession of a third person holding the same as owner, and claiming absolute title to and dominion over the same as his own property, whether derived from the debtor before he was adjudged bankrupt or from some former owner.—*Knight v. Cheney*, vol. 5, p. 305.

#### 9. Enjoining Use of a Particular Agreement.

A petition to enjoin a party from making use of a certain agreement which he holds is not a formal suit but a summary proceeding.—*Samson v. Clark & Burton*, vol. 6, p. 403.

#### 10. Claimant of Fraudulent Lien.

The United States District Court has ample power to restrain a claimant of a lien, obtained by collusion with the bankrupt, from proceeding elsewhere to enforce his

lien, and this power may be summarily exercised without a formal suit. When necessary, for the protection of the bankrupt's estate, or in furtherance of justice, an order once made may be revoked.—*Samson, Assignee, v. Clark & Burton*, vol. 6, p. 403.

#### 11. Review not Limited by Amount.

In summary proceedings there is nothing in the law to limit the jurisdiction of the Circuit Court, on review, to the value of the property in controversy.—*Samson v. Blakes et al.*, vol. 6, p. 410.

#### 12. Notice of Appeal.

A notice of appeal cannot be considered as proper process under paragraph 1, Section 2, for revising summary proceedings of the District Court under Section 1.—*In re Casey*, vol. 8, p. 71.

#### 13. Application for Review.

The application for review given by the first paragraph of the 2d Section of the Act, extends to that class of cases wherein the District Court by Section 1, is given jurisdiction to issue summary orders, and to proceedings of that court in the ordinary proceedings in bankruptcy or upon petition therein, where special aid and relief is sought in any matter embraced in that jurisdiction.—*In re Casey*, vol. 8, p. 71.

#### 14. Cannot take Property from Claimant.

The District Court has no authority on a summary proceeding, to take property from the hands of one who has lawfully acquired possession and claims an adverse interest to the assignee. Such proceedings must be by a regular suit at law or equity.—*Marshall v. Knox et al.*, vol. 8, p. 97.

#### 15. Appeal does not Lie from.

An appeal will not lie to the Supreme Court of the United States from a decision of the Circuit Court, rendered in the exercise of supervisory jurisdiction granted to it, of decisions in the District Court, on proceedings in bankruptcy of a summary character.—*Hall v. Allen*, vol. 9, p. 6.

### SUPPLEMENTARY PROCEEDINGS.

See STAY OF PROCEEDINGS.

#### Under Section 292 Code of New York.

An examination in supplementary proceedings under Section 292 of the Code of

the State of New York is "legal process" within the meaning of Section 39 of the Bankrupt Act.—*Brock v. Hoppock*, vol. 2, p. 7.

## SURETY.

See APPEAL,  
BOND,  
DISCHARGE,  
DISTRIBUTION,  
DIVIDENDS,  
PREFERENCE,  
PROOF OF DEBT.

## 1. On Appeal Bond in Georgia.

The security on an appeal bond in Georgia, only binds himself for the payment of the debt or damages for which *judgment may be entered* in the cause, and if no judgment is ever entered against the principal in the cause, no liability attaches to the security.—*Odell v. Wooten*, vol. 4, p. 183.

## 2. May Pay Debt for which he is Contingently Liable—How.

A surety may pay the debt for which he is contingently liable, so as to satisfy the requirements of Section 19 of the Bankrupt Act, by giving his individual note, if such note is expressly received as payment.—*In re Morrill*, vol. 8, p. 117.

## 3. Pleading Discharge.

Suit was brought against defendants as sureties on the bond of a deceased collector of internal revenue. One of the defendants pleaded his discharge in bankruptcy in bar of the action, and the court held, that although this defendant was a surety to the government, he was discharged under the Bankrupt Act, and that the plea was good, this case not coming within the exceptions named in the Act.—*United States v. Throckmorton et al.*, vol. 8, p. 309.

## 4. Of Guardian—Discharge.

The surety of a guardian is discharged in bankruptcy from the defaults of his principal occurring prior to the commencement of proceedings in bankruptcy against the surety, though the fact of such default was undetermined until after the surety received his discharge, and although the right of action against the surety did not accrue until the decree determining the default of the guardian was rendered.—*Jones & Cullon v. Knox*, vol. 8, p. 559.

## 5. Liability as, not Included.

The certificate of discharge given to a

bankrupt does not include liability as a surety for the faithful performance of duty by a public officer.—*United States v. Herron* vol. 9, p. 535.

## 6. On Bond to Dissolve Attachment.

Where to dissolve an attachment a defendant gives an undertaking with two sureties, and more than four months after the issuing of the attachment, bankruptcy proceedings are commenced against the defendant, his discharge in bankruptcy will not prevent judgment being recovered in this action, and his sureties being bound therefor.—*Holyoke v. Adams*, vol. 10, p. 270.

## 7. Suit by, against Principal Discharged.

A surety brought an action against his principal on his bond as guardian, and upon which he was a defaulter. As a defense he interposed the plea that he had been discharged in bankruptcy.

*Held*, That the defalcation of the defendant, the principal, on his bond as guardian, constitutes a debt which was created while he was acting in a fiduciary capacity, and was therefore excepted from the operation of his discharge in bankruptcy.—*Wesley Halliburton v. Calvin T. Carter*, vol. 10, p. 359.

## 8. Liability of Principal to.

The liability of the principal to his surety within the meaning of the Bankrupt Act, must be considered as having been contracted when the instrument was signed.—*In re Perkins et al.*, vol. 10, p. 529.

## SURPLUS.

See ASSETS,  
BANK BILLS,  
BANKRUPT,  
INTEREST,  
PROOF OF DEBT.

## 1. Proceeds of Sale of Seat in Stock-Board.

Where, by the articles of association of a stock-brokers' board, a seat in it, in the event of the insolvency of the member, is required to be disposed of, and the proceeds applied first exclusively to the payment of debts due other members.

In such case, upon the bankruptcy of the broker, his assignee in bankruptcy will only be entitled to the surplus arising from the sale after the other members of the

board are paid in full their claims.—*Hyde*, v. *Woods*, vol. 10, p. 54.

## 2. Non-Proving Creditors.

Non-proving creditors are entitled to balance after paying debts proved.—*Brisco*, vol. 2, p. 226.

## 3. Of Deposit for Fees.

When a bankrupt has obtained his discharge, and a balance of his deposits for fees with the Register has been paid over to the assignee, it should be distributed among the creditors who have been returned by the bankrupt *pro rata*. If only one creditor has proved his claim, he will be entitled to full payment if the fund is sufficient. The money should be distributed among the creditors, although they have failed to make proof of their claims.—*In re James*, vol. 2, p. 227.

## 4. Distribution of.

The surplus funds in the hands of the assignee, after the settlement of the estate, where no debts have been proved, and there is reasonable cause to believe that none will be proved, are to be paid to the bankrupt upon the filing of a petition on oath by him, setting forth his reasons for believing that no creditors desire to prove their debts, and asking that the funds shall be paid to him.—*A. W. Hoyt*, vol. 3, p. 55.

## 5. Payment of Interest.

Where there is a surplus in the hands of the assignee after paying the creditors of a bankrupt it should be applied to the payment of interest, to be computed from the date of the adjudication.—*In re Richard, Mary & S. R. Town*, vol. 8, p. 40.

## 6. In State Court.

Where a surplus fund remains in the hands of the State court that is claimed by judgment liens antedating the commencement of proceedings in bankruptcy—the good faith or validity of which are proven—the fund will be distributed to them, and not turned over to the assignee in bankruptcy.—*Biddle's Appeal*, vol. 9, p. 144.

## SURRENDER.

See BANKRUPT,  
CREDITORS,  
PREFERENCE,  
PROOF OF DEBT,  
PROPERTY.

## 1. Register may Receive of Bankrupt.

A Register is authorized and required, upon the request of a voluntary bankrupt, to receive a surrender of his property and safely keep it until turned over to an assignee.—*Abraham E. Hasbrouck*, vol. 1, p. 75.

## 2. Unsatisfied Judgments.

A creditor proving his debt against a bankrupt, cannot afterwards maintain a suit for the claim, and unsatisfied judgments already obtained are discharged and surrendered in by the proving of the debt.—*Sam'l W. Levy & Mark Levy*, vol. 1, p. 327.

## 3. After Participating in Fraud on Act.

Creditors having reasonable cause to believe a debtor insolvent, and accepting chattel mortgages from him to secure their debts, thereby participating in such a fraud on the Act as to found a proceeding against the debtor in involuntary bankruptcy will not be permitted to relinquish their intended preferences and claims, to prove their debts under the 23d, or any other Section of the Bankrupt Act.—*In re Thomas Princeton*, vol. 1, p. 618.

## 4. Custody of Property on.

The bankrupts surrendered their property to the Register, who appointed a watchman to guard and keep it, and submitted a report of his action to the district judge for approval, who ordered United States Commissioner to take testimony as to the facts.—*In re Bogert & Ecans*, vol. 2, p. 585.

## 5. Adjudication on Voluntary Petition— Order will Issue for.

Where debtors had been adjudged bankrupts on their own petition, but delayed to surrender their assets to the Register,

*Held*, Order will issue for the immediate surrender thereof to the Register, and the appointment by him of a proper custodian.—*In re Shafer & Hamilton*, vol. 2, p. 586.

## 6. Of Security.

Before the choice of assignee, if a mortgagee seeks to prove his debt, he must abandon his security; but after appointment of assignee he may prove for any balance of his debt, after deducting the value of the mortgaged property, as agreed upon with the assignee.—*In re William C. High and Wm B. Hubbard*, vol. 3, p. 192.

**7. By Creditor Receiving Preference.**

Where a creditor received a preference, having reasonable cause to believe that the bankrupt was insolvent when it was made, but afterwards voluntarily surrendered to the assignee in bankruptcy all the property and accounts received by the preference, and then proved his debt against the estate in bankruptcy, counsel for assignee moved to strike out such proof of debt.

*Held*, The creditor was entitled so to prove his debt. Motion denied.—*Henry B. Montgomery*, vol. 8, p. 374.

**8. Judgment-Creditor.**

Where judgment-creditor had received a preference, and not having surrendered what property was received under it, on proving his claim in bankruptcy,

*Held*, The proof thereof must be rejected, and himself and the sheriff ordered to pay to the assignee the amounts in their hands received on such execution, less the sheriff's fees.—*In re Charles A. Davidson*, vol. 8, p. 418.

**9. Payment of Decree against Him is not.**

When the claimants accept a preference on account of a debt, having reasonable cause to believe the same to be contrary to the provisions of the Bankrupt Act,

The payment by said claimants of a decree obtained against them is not a *surrender* within the meaning of the Bankrupt Act, and they are not allowed to prove the said debt against the estate of said bankrupts.—*In re Tonkin & Trewartha*, vol. 4, p. 52.

**10. Idem.**

Where an assignee brings his action under the 35th Section of the Bankrupt Act, to recover of a creditor of the bankrupt property alleged to have been sold or conveyed to him in fraud of the Act, and where the defendant in such action denies his liability, resists a recovery, goes to trial, and judgment passes against him, such a judgment conclusively establishes that the creditor sought to obtain a fraudulent preference, and disentitles him to prove up against the estate of the bankrupt, the debt or claim on account of which he received the fraudulent preference. Payment of such a judgment upon execution issued, is not such a *surrender* as is contemplated by Section 23 of the Act,

and will not enable the party to prove up the claim in satisfaction of which he received property from the bankrupt by way of illegal preference.

Sections 23 and 39 of the Bankrupt Act commented on, and construed to stand together.—*Richter's Estate*, vol. 4, p. 221.

**11. Any Time Prior to Rendition of Decree.**

Until a recovery has been had, by judgment or decree, a preferred creditor may surrender under Section 23; and his right to make probate of his debt and share in the distribution of bankrupt's estate will not be affected by suit commenced and pending against him at the time of such surrender.—*In re Kipp*, vol. 4, p. 593.

**12. By Creditor Receiving Preference.**

C & D, partners in business, became insolvent, and confessed a number of judgments in favor of creditors.

E & F, knowing of the insolvency of C & D, at the time their judgments were taken out, caused executions to be issued upon these judgments, and then directed their agent to have the sheriff turn over the property to any agent whom the creditors might agree upon, or to the marshal, in case proceedings should be instituted under the Bankrupt Law.

This was a good surrender for their preference within the intent of the Act.—*J. J. & C. W. Walton*, vol. 4, p. 466.

**13. After Merger in Judgment.**

Creditors petitioned to have debtors adjudged bankrupts. The debt due the creditors had been merged in a judgment which was clearly a fraudulent preference.

*Held*, That the debt having been thus merged it was not a provable debt, and a petition founded upon it could not be sustained.

In such a case, however, creditors will be allowed to surrender their preference, and, upon their doing so, the acts of bankruptcy being confessed, an adjudication will be ordered.—*In re M. Hunt & W. E. Hornell*, vol. 5, p. 433.

**14. May be in Part where the Preference has been in Part.**

Where a debt or claim on account of which an illegal preference is received, is single or entire, or where such claim con-



sists of disconnected debts, and a preference is received on account of them all, the preferred creditor must surrender *all* he has received before he will be allowed to prove any portion of his debt.

Where a creditor has several disconnected claims or debts, and receives a preference as to a part only of such debts, he may prove without surrender as to the debts on which he has received no preference; following *in re Richter*, 4 N. B. R., 67.

Where a creditor has separate and distinct debts, on which he receives separate and distinct preferences, he may surrender as to some without surrendering as to all, and will be entitled to prove as to the debts so surrendered.—*In re D. G. Holland*, vol. 8, p. 190.

#### 15. After Adverse Decree, too Late.

Where a creditor has received an alleged preference, it is too late, after an adverse decision as to the validity of a deed of trust, to surrender up his security and ask permission to come in and prove his debt.—*In re Simeon Leland et al.*, vol. 9, p. 209.

#### 16. Foreign Corporation obtaining Preference.

A bank in Canada filed with the assignee in bankruptcy proof of an alleged debt, to the amount of some fifteen thousand dollars in lawful money of the Dominion of Canada.

It appeared that part of this amount was in judgment upon which execution had been issued, and the sum of two thousand dollars was collected over and above the costs and expenses of such sale; that the residue of the debt proved was claimed as due upon drafts drawn upon and accepted by the bankrupt, payable in the city of Buffalo, and also included interest at the rate of four per cent., and damages for the non-payment of such acceptances, such damages amounting to nearly five hundred dollars.

The assignee petitioned to this court for an order striking out the proof of debt of the bank unless it should pay into court the amount realized upon the execution, to be distributed equally among the creditors, and consent to receive dividends upon the amount of principal due from the bankrupt, and release its judgment, and all claims for damages, interest, and costs.

*Held* That, under the circumstances, the

bank, if it had had its corporate existence in the United States, could not have obtained by a suit at law and judgment therein, in the courts of this country, any right to property sold under such judgment, and all such proceedings would have been stayed, on application, by order of the Bankrupt Court; and a foreign creditor cannot claim, under the comity of nations, to be more favored than our own citizens, to the direct prejudice of creditors residing here. It is therefore clear that it must account for the property converted to its use in Canada to the assignee, and proof can be made and dividend taken upon the original debt only, without regard to a subsequent judgment thereon. The whole debt of the creditor, at the time the bankruptcy proceedings were commenced, shall be considered the debt upon which this principle of equity among creditors is to operate; that no damages can be allowed to a foreign creditor as against the acceptor of a draft payable here. The amount proved should not include interest beyond the day of adjudication.—*Oliver Bugbee*, vol. 9, p. 258.

#### 17. Register can Receive only in Voluntary Cases.

The Register can receive the surrender of a bankrupt, in cases of *voluntary* bankruptcy only. In involuntary cases, the marshal, as messenger, must seize the property, even if previously to the warrant of seizure being issued it has been surrendered to the Register.—*In re Howes & Macy*, vol. 9, p. 423.

#### 18. By Trustee of Illegally Preferred Creditor.

Where the trustee of an illegally preferred creditor surrenders the trust property to the assignee without suit, the preferred creditor may prove his debt.—*In re Clarke & Daughtrey*, vol. 10, p. 21.

### SUSPENSION OF PAYMENT.

See ACTS OF BANKRUPTCY,  
COMMERCIAL PAPER,  
ENDORSER,  
FRAUD,  
PAYMENT,  
TRADER.

#### 1. By Trader for Fourteen Days.

Where a trader stops payment of his commercial paper and does not resume pay-



ment thereof within fourteen days, he commits an act of bankruptcy.—*In re Alfred L. Wells & Alfred L. Wells, Jr.*, vol. 1, p. 171.

## 2. Though Stoppage not Fraudulent.

It is not necessary to show that the stoppage of payment of commercial paper was fraudulent; suspension of payment and non-resumption within fourteen days is all that is contemplated by this provision of the Bankrupt Act.—*Walter C. Cowles*, vol. 1, p. 280.

## 3. Idem.

A suspension of payment of commercial paper for fourteen days is not, in the absence of fraud, an act of bankruptcy.—*In re Willidm Leeds*, vol. 1, p. 521.

## 4. Contra, must be Fraudulent.

Stoppage and non-resumption of payment of commercial paper for a period of fourteen days is not an act of bankruptcy, unless fraudulent, and this must be distinctly alleged in the petition and accompanying affidavits, and if fraud be not alleged, an order to show cause should be refused.—*In re Cone & Morgan*, vol. 2, p. 21.

## 5. Mere Suspension is Prima Facie Fraudulent.

Suspension of payment of commercial paper for fourteen days, by a merchant, is *prima facie* evidence of fraud, and casts the burden of proof on the alleged bankrupt; and, being unexplained, a decree of bankruptcy must be adjudged on the creditor's petition.—*In re Ballard & Parsons*, vol. 2, p. 230.

## 6. Of Non-Commercial Paper.

The non-payment at maturity, of promissory notes that are not commercial paper, is no ground for an adjudication of the debtors as bankrupts, on a petition by a creditor in involuntary bankruptcy. Petition dismissed with costs.—*In re Samuel Lowenstein & Rosa Lowenstein*, vol. 2, p. 306.

## 7. Obtaining Extension of Time.

A firm suspended payment of their commercial paper, and did not resume within fourteen days, but obtained an extension of time from most of their creditors; one creditor withheld assent, and petitioned to have the firm adjudged bankrupt, to which

one member of the firm made answer of denial, the other member making default.

*Held*, That such suspension was not, under the circumstances, an act of bankruptcy. Mere insolvency is not of itself an act of bankruptcy.—*Doan v. Compton & Doan*, vol. 2, p. 607.

## 8. Allegation of, how made.

This allegation should state, as nearly as possible, the date of the promissory note, or bill of exchange of which payment had been stopped; to whom made and for what amount, and when payable; and whether the debtor was liable thereon as maker or indorser; and by whom the same was held when payment was neglected or refused.—*Randall*, vol. 3, p. 18.

## 9. Assumption of Firm Debts upon Dissolution.

Firm dissolved, with written agreement, that one member should assume and pay its obligations, including outstanding commercial paper. Payment thereof was suspended, and was not resumed in fourteen days.

*Held*, That such suspension was an act of bankruptcy, and the firm must be adjudicated bankrupts. It is unnecessary to allege or prove fraud in such suspension, where payment is not resumed within a period of fourteen days.—1 *N. B. R.*, 181; *In re John Weikert and Frank M. Parker*, vol. 3, p. 27.

## 10. Disputed Debt

When a man declines to pay, solely because he is not liable to pay, or because he has a valid claim or off-set against the paper, this is not a stoppage or suspension within the meaning of the Bankrupt Law.—*Thompson & McClallen*, vol. 3, p. 185.

## 11. Must be Fraudulent.

The stopping of payment of commercial paper, mentioned in Section 39 of the Bankrupt Act, must be fraudulent, and must continue for fourteen days in order to be an act of bankruptcy.

Such suspension or non-resumption is fraudulent (supposing the liability to be undisputed) when it is done purposely and not by accident or mistake.—*Holis*, vol. 3, p. 310.

## 12. Mere Stoppage and Non-Resumption for Fourteen Days.

Proof of the mere stoppage and non-

payment of commercial paper for fourteen days, does not, of itself, establish an act of bankruptcy. Creditors must show that such stoppage or suspension was fraudulent.—*In re John Davis*, vol. 3, p. 339.

### 13. Distinction as to Traders.

In a mercantile community the non-payment of a note at maturity by the maker, who is a merchant or trader, is *prima facie* evidence of insolvency, and warrants a decree in bankruptcy. In an agricultural country the rule is different, and there no man is suspected of being insolvent from the fact alone that his notes are not paid promptly at maturity.—*Shaffer v. Fritchery & Thomas*, vol. 4, p. 548.

### 14. Of a Single Note.

The non-payment of a single piece of commercial paper is not an act of bankruptcy in itself, for the reason that there may be a defense to it; but where such suspension is chronic, or there is an inability to meet and pay cheques and notes as they mature, then that is such a suspension as the law contemplates, and even though there may be but a single piece of paper and fourteen days past due, the maker may be adjudged bankrupt.—*McLean et al. v. Brown, Weber & Co.*, vol. 4, p. 585.

### 15. Under Section 39 before Amendment of July, 1870.

A suspension of payment of commercial paper for fourteen days under Section 39, before the amendment of July 14th, 1870, was *per se* an act of bankruptcy. The omission to pay such paper for fourteen days, subsequent to that amendment, is a suspension within its meaning, although the paper fell due and was dishonored before its passage.—*Baldwin et al. v. Wilder et al.*, vol. 6, p. 85.

### 16. Classes Liable to Adjudication for— Non-payment of Single Bill Disputed Claim.

Under the 39th Section of the Bankrupt Act, as amended by the Act of July 14th, 1870, providing for putting into involuntary bankruptcy a person "who, being a banker, broker, merchant, trader, manufacturer, or miner, has fraudulently stopped payment, or who has stopped or suspended and not resumed payment of his

commercial paper within a period of fourteen days," a person who is not a banker, broker, merchant, trader, manufacturer, or miner, is liable to be put into involuntary bankruptcy, if he has stopped or suspended and not resumed payment of his commercial paper within a period of fourteen days.

Under the Section, as so amended, a person cannot be put into involuntary bankruptcy for the fraudulent stoppage of payment, unless he is a banker, broker, merchant, manufacturer, or miner; but if he is in one of those classes, he may, for the fraudulent stoppage of the payment of his debts, be put into bankruptcy at once, without waiting fourteen days, and without his stoppage being a stoppage of the payment of commercial paper.

The clause in the 39th Section in regard to the stoppage of the payment of commercial paper, ought not to be used to enable a creditor to collect an ordinary debt on commercial paper, where there has been no stoppage or suspension of payment of the commercial paper of the debtor.

Such stoppage or suspension has not taken place, when a sufficient excuse is shown why the paper was not paid.

Even though the suspension may have continued for fourteen days, yet a *bona fide* denial of liability on the paper is such an adequate legal excuse, that a person ought not to be adjudged a bankrupt solely for suspending for fourteen days on the paper, even though on investigation, the Bankruptcy Court may be of opinion that, in fact, the debtor was liable on the paper.

A debtor may, under certain circumstances, be considered as really having suspended payment generally of his commercial paper, although but a single piece of paper is shown to have lain over unpaid for fourteen days.—*Hercules Mutual Life Assurance Society of the United States*, vol. 6, p. 338.

### 17. Contested Claim.

An adjudication of bankruptcy cannot be had upon notes that were given merely as vouchers or memoranda, and which had no stamps upon them when given, or nothing to show that any stamps were to be put upon them by the maker thereof. Although payment was suspended upon said notes, in fact it was not such a suspension

as the Bankrupt Law contemplates, for the reason that the maker claimed to have a good defense to their payment and honestly believed that he was not legally bound to pay the notes until it should be so adjudged by a competent tribunal.—*In re Westcott et al.*, vol. 7, p. 285.

### 18. Railroads.

A railroad company organized under the laws of Iowa is neither a banker, broker, merchant, trader, manufacturer, nor miner, within the meaning of these words as used in the Bankrupt Law, and cannot be proceeded against in bankruptcy for the mere suspension or non-payment, however long continued, of its commercial paper.—*Winter v. The Iowa, etc., Railway Co.*, vol. 7, p. 289.

### 19. Single Act of Non-payment.

It seems that a single act of stopping payment followed by a non-resumption for fourteen days is *prima facie* an act of bankruptcy within the meaning of the Bankruptcy Act.—*In re McNaughton*, vol. 8, p. 44.

### 20. Indorser.

The indorser of a promissory note or bill of exchange, who, after due protest and notice, fails to provide for payment of his liability within fourteen days, thereby commits an act of bankruptcy, and may be adjudged a bankrupt upon the application of a petitioning creditor.—*In re Clemens*, vol. 8, p. 279.

### 21. Note Given Prior to Bankrupt Act.

A debtor does not commit an act of bankruptcy who stops payment of a note given long before the passage of the Bankrupt Act, and does not resume payment subsequent thereto, up to the filing of the petition in bankruptcy.—*Mendenhall v. Carter*, vol. 7, p. 320.

### 22. Continuous Act of Bankruptcy.

The continued non-payment of commercial paper by a merchant or trader is, as it were, a continuous act of bankruptcy and not such a final, completed, and definite act that it could not, after the lapse of six months, be made the basis of an adjudication.—*Raynor*, vol. 7, p. 527.

### 23. Non-payment of one Note without Legal Excuse.

A suspension of payment of one piece of commercial paper for fourteen days without legal excuse, is an act of bankruptcy.—*Wilson*, vol. 8, p. 396.

### 24. In Consequence of Injunction.

A suspension of payment of commercial paper for fourteen days, when at the time of such suspension the debtor was enjoined by the Bankrupt court from making any transfer or disposition of his property, is not an act of bankruptcy.—*In re Edward D. Pratt*, vol. 9, p. 47.

## TAXES.

See PROPERTY.

### 1. Superior to all Claims of Citizens.

A State has, in her sovereign capacity, a lien on all her realty for taxes. Such lien has priority over any claim of one of her citizens, no matter when such claim may have been acquired.—*Brand*, vol. 3, p. 324.

### 2. Unaffected by Bankrupt Law.

The Bankrupt Law can neither require a State to prove in the Bankruptcy Court her claim for taxes, nor sell the property of the bankrupt free from the encumbrance thereof.—*Stokes v. The State of Georgia*, vol. 9, p. 191.

### 3. Sale by Assignee without Order of Court does not Divest.

The Statute of Mississippi of 1860 makes the sales of tax collectors thereafter had valid to all intents, except for fraud or mistake in the assessment or sale, or unless the tax has been paid.

The Bankrupt Law makes no distinction between the different kinds of lien. If the law of the State recognizes a lien by judgment, or in favor of a mechanic, or by mortgage, or in any other form, each is respected in the Bankrupt Court according to its dignity. Wherever the creditor has the legal right to have a debt satisfied from the proceeds of property, or before the property can be otherwise disposed of, it is a lien on such property for the security of the debt.

Where the property is incumbered, it will be taken for granted that the assignee sold subject to incumbrances, but the lien

creditor or creditors must be notified before the sale takes place.

If a sale of the property was made without the order of the court, it was subject to the lien of the taxes; if made under a judicial decree, it did not affect the lien unless the revenue officer or some proper representative of the same were made a party to that application.

A mortgagee out of possession, the holder of a mechanic's lien, or a party who derived title through the assignee in bankruptcy, would be entitled to appear and contest the confirmation and establishment of the tax title.—*Meeks v. Whatley*, vol. 10, p. 498.

### TESTIMONY.

See BANKRUPT,  
COST AND FEES,  
EXAMINATION,  
PRIVILEGE,  
REGISTER,  
WIFE OF BANK-  
RUPT,  
WITNESS.

Section 30, Act of 1789, and Act of 1817,  
do not apply to Bankrupt Court.

Section 30, Act of 1789 (1 Stat. 88), authorizing testimony in the United States court to be taken *de bene esse*, and the Act of 1817 conferring power to take testimony (3 Stat. 350), and of 1872 (17 Stat. 89), before commissioners of the Circuit Court, does not apply to proceedings in bankruptcy.

Testimony in bankruptcy proceedings can only be taken on commission, and cannot be taken on notice.—*Dunn*, vol. 9, p. 487.

### THIRTY-FIFTH SECTION.

See PREFERENCES.

### THIRTY-NINTH SECTION.

See ACT OF BANKRUPTCY.

### THIRTY PER CENT.

See AMENDMENT,  
DISCHARGE.

### TIME.

### TIME.

See APPEAL,  
COMPUTATION OF TIME,  
DISCHARGE,  
INSOLVENT LAWS,  
PRACTICE,  
REVIEW.

#### 1. Filing Specification Opposing Discharge.

The ten days, within which specifications in opposition to the discharge of a bankrupt must be filed, date from the adjourned day of the hearing of the order to show cause; and not from the day first appointed.—*In re Darius Tullman*, vol. 1, p. 540.

#### 2. For Examination of Witnesses.

The time to examine witnesses does not expire by the bankrupt filing his petition for a discharge.—*Seckendorf*, vol. 1, p. 626.

#### 3. Application for Discharge.

Where debts are proved and there are assets, application for a discharge cannot be filed before the expiration of six months from the issue of the warrant of adjudication.—*In re Simon Bodenheim and Jacob Adler*, vol. 2, p. 419.

#### 4. Where there are no Assets or Debts Proven.

Where no assets have come to the hands of the assignee, or no debts been proved against the bankrupt estate, it is discretionary with the court to grant the petition for discharge when the bankrupt fails to apply until after one year from date of his being adjudged bankrupt.—*Canady*, vol. 3, p. 11.

#### 5. Petition for Review.

No time is prescribed by the Act within which it is necessary to bring a petition for review.—*In re Alexander*, vol. 3, p. 33.

#### 6. Civil War.

The proclamation declaring the blockade of the ports of the insurgent States, must be regarded as the first formal recognition of the existence of civil war by the National Government.

The period of its termination has not been so definitely ascertained; that it was declared by the President and Congress to have ended August 2, 1866, which date has been recognized by the Supreme Court in

various cases, but in a case involving the effect to be given to the Statute of Limitations the court declined fixing any date as applicable to all cases. In this case, as applicable to Virginia, the court fixed the date on the 26th of May, 1865.—*Bigler v. Waller*, vol. 4, p. 292.

#### 7. Preference.

The execution being levied a few days over one month before proceedings in bankruptcy were commenced against the debtors, the limitations of the 35th and 39th Sections of the Bankrupt Act do not apply, although warrant to confess judgment given over one year.—*In re Terry & Cleaver*, vol. 4, p. 126.

#### 8. Appeal.

In computing the time within which an appeal in bankruptcy must be taken, Sunday is to be counted, except that when the last day would fall on Sunday, that Sunday is to be excluded.—*York & Hoover*, vol. 4, p. 479.

#### 9. Application for Discharge.

Bankrupt filed a petition for his discharge more than one year after adjudication, setting forth in said petition that no debts had been proved, and no estate had come into the hands of the assignee for distribution. No debts in the case had been proved, and assets to the amount of ten dollars and eighty cents had come into the hands of the assignee.

*Held*, That bankrupt should have filed his petition for discharge within one year after adjudication, and failing to do so, discharge must be refused.—*In re P. C. Schenck*, vol. 5, p. 93.

#### 10. Suit by Assignee to Recover Property Fraudulently Conveyed.

Where the bankrupt fraudulently conveyed his lands to avoid a judgment, a purchaser under the judgment and a sale made under execution after proceedings in bankruptcy commenced, cannot defend on the ground that the assignee did not commence suit to set aside the execution, sale and deed within two years after the assignment. No cause of action accrued to the assignee against such purchaser until he acquired his title under the judgment and execution sale.—*Davis v. Anderson et al.*, vol. 6, p. 146.

#### 11. When Debt must Exist to be Provable.

It was the intention of Congress to adopt the time of the actual adjudication of bankruptcy as the time at which a debt must exist in order to be provable, in contradistinction to the time of the commencement of the proceedings in bankruptcy.—*In re Hennocksburgh & Block*, vol. 7, p. 37.

#### 12. Interest Computed.

Interest on provable debts cannot be computed as against the general assets of the bankrupt's estate, beyond the date of the adjudication.—*J. C. Haake*, vol. 7, p. 61.

#### 13. Publication of Notices.

Where a statute requires a notice to be published once a week for four weeks, in order to a strict compliance therewith, an interval of seven days must intervene between such publication. Hence, a notice published on the 11th, 21st, and 27th days of January, and on the 1st and 10th days of February, does not comply with the terms of the statute, and any proceedings based on such publication must fail on account of this irregularity.—*In re King & King*, vol. 7, p. 279.

#### 14. Of Contracting Debt.

A tenant, on the 1st day of May, 1868, surrendered his lease, which had another year to run, under a bargain that the landlord should rent the premises for the remainder of the term for what he might be able to get for them, and apply the rent to the credit of the tenant, and that the tenant should pay to the landlord such sum as the rent so received by him, subsequent to such surrender, should fall short of the rent reserved in the lease so surrendered with interest on quarterly deficits from the close of each quarter respectively. At the end of the year a considerable amount having so become due the landlord recovered a judgment therefor. After the recovery of this judgment the bankrupt filed his petition in bankruptcy.

*Held*, That the claim was contracted prior to January 1st, 1869, to wit: On the day of surrendering the lease and entering into the contract to pay the deficiency of rent.—*Swift*, vol. 7, p. 591.



**15. Of Transfer.**

Where a deed is made by A to B, over six months prior to commencement of proceedings in bankruptcy, but not recorded until within the six months, and the local law of the State is, such deed "shall take effect as to subsequent purchasers and as to all creditors, *only* from the time of record,"

*Held*, This is a transfer of property *within* six months, within the intent and meaning of the Bankrupt Act.—*Thornhill & Co. v. Link*, vol. 8, p. 521.

**16. Of Contracting of Claim.**

Where A, after January, 1869, pays a judgment rendered against him as surety of B, on a note given prior to 1869, the debt to him by B, thereby created is "*contracted*" after January 1, 1869, within the meaning of the 33d Section of the Act.—*Parrish*, vol. 9, p. 573.

## TITLE.

See ASSETS,  
ASSIGNEE,  
ASSIGNMENT,  
BANKRUPT,  
DISPUTED TITLE,  
ENCUMBERED PROPERTY,  
EXAMINATION,  
EXEMPTION,  
TIME COVERT,  
SALE.

**1. Of Property Fraudulently Conveyed.**

If A conveys his property to B when in failing circumstances, for the purpose of defrauding his creditors, and B has knowledge of these facts, under the Bankrupt Law of 1867, if A is afterwards adjudged bankrupt, the sale of the goods to B is void, and the title vests in the assignee in bankruptcy, as soon as he is appointed, and he may sue to recover possession of them.—*Bolander v. Gentry*, vol. 2, p. 256.

**2. Relation Back of Assignee's Title.**

Where creditors, prior to the commencement of bankruptcy proceedings by other creditors, recovered a judgment, and caused execution to be issued and levy made on certain property of the debtor, and also commenced supplementary proceedings in a State court, and had a receiver appointed for certain choses in action, and where, after the adjudication of the debtor's bank-

ruptcy, the receivership under the State court was extended to all the debtor's property, and the assignee in bankruptcy was not made a party thereto,

*Held*, The appointment of an assignee in bankruptcy relates back, and clothes him with title to all the bankrupt's legal and equitable rights and interests, and choses in action, which belonged to him on presentation of petition.—*Smith, etc., v. Buchanan et al.*, vol. 4, p. 397.

**3. In Register as Register.**

The title to the property of a bankrupt by operation of law vests in the Register as Register, although the property may be in the possession of the United States marshal as messenger, it is still in the possession of the court, and the Register is, by the Bankrupt Law, the court.—*Carow*, vol. 4, p. 544.

**4. Judgment in Favor of Bankrupt Amended after Adjudication.**

A recovered a judgment in a certain suit prior to his being adjudged a bankrupt. This judgment was amended, after the adjudication and conveyance of A's property to the assignee, by order of the court in which the action was brought, so as to increase, slightly, the amount of the original judgment.

A's assignee brought suit to recover on this judgment, but his right to maintain the action was denied on the ground that the judgment being entered subsequent to the assignment, was the property of the bankrupt.

*Held*, That the cause of action and original judgment were clearly antecedent to the application in bankruptcy, and the assignment to the assignee, and as such passed by operation of law to him, subject to all the rights of the bankrupt to have it altered and corrected.

That the right of the assignee to maintain this action does not depend on the instrument of assignment, as the Bankrupt Act of 1867 provides that all *choses in action*, all debts due, etc., together with the right to sue, shall, in virtue of the adjudication, and the appointment of the assignee, be at once vested in such assignee.—*Frank Zantzinger v. F. I. Ribble, Assignee in Bankruptcy of John C. Deyerle*, vol. 4, p. 724.



**5. Contract for Conditional Delivery.**

A contract for the conditional delivery of goods to a debtor gives his creditors no title to them until the account for the same is paid.—*Sawyer et al. v. Turpin et al.*, vol. 5, p. 339.

**6. Sale without Order of Court after Proceedings in Bankruptcy.**

A sale of the debtor's land by virtue of an execution issued and levied after the filing of the petition in bankruptcy, will not pass the title to the land as against the assignee, although the judgment was entered and the lien created prior to the bankruptcy.

After the commencement of the proceedings in bankruptcy, all the property and assets of the bankrupt are in *custodio legis*, within the control of the Bankrupt Court only, and no other tribunal can interfere with its process.

It is not essential to the title of the assignee that the assignment to him by the Register should be recorded within six months from its date. The title of the assignee takes effect by relation from the commencement of the proceedings in bankruptcy, and the recording is not required for the mere purpose of giving notice to purchasers.—*Davis v. Anderson et al.*, vol. 6, p. 146.

**7. Conditional on Payment of Price.**

A written contract provided that the ownership of personal property was not to pass until the stipulated price had been paid.

*Held*, That under the contract the ownership would remain in the vendor although the vendee had possession, and all but a small portion of the money due had been paid; that if the assignee in bankruptcy shall deem it for the interest of the creditors, he may pay the balance due to the vendor and hold the property for the benefit of the estate.—*In re J. H. Lyon*, vol. 7, p. 182.

**8. Money Obtained Fraudulently.**

A, being about to start to Europe, applies to K, a banker, for two five hundred dollar bills in exchange for one thousand dollars of small notes. K declines, under pretense of not having the five hundred dollar bills. A then asks for exchange on New York, and K gives him a cheque for

one thousand dollars on a bank in New York, knowing at the time that the New York bank had protested his cheques, and that he was largely overdrawn. K, at the time of giving the cheque and receiving the money, being in the act of preparing a petition in bankruptcy, and in consultation with his legal adviser in the private office. A filed a bill setting up the fraud, and alleging that the title to the thousand dollars never vested in K or his assignees by reason thereof, and claiming to be paid in full.

*Held*, The title to the money vested in K, notwithstanding the fraud, and that A was not entitled to be paid in full, but only to share *pro rata* with the other creditors.—*In re John King*, vol. 8, p. 285.

**9. Loan Fraudulently Procured and Remaining in Specie.**

A made a loan to B and delivered to B's agent a package of bank notes containing the amount of the loan.

At the time the agent of B was instructed to negotiate the loan B was insolvent, and the contract made by his agent was *after* his failure, but *before* the news had reached A. It also appeared that B had then resolved not to pay the bill or note which was given as evidence of the loan; that, as soon as A was informed of the failure he endeavored to reclaim the package of notes still in the hands of B's agent; that it was placed in a bank with the seal unbroken, for the benefit of A, and the next day B, in the presence of the president of the bank, expressly disclaimed ownership of the said package and declared that it justly belonged to A.

*Held*, That the assignee in bankruptcy of B had no title to the package of notes for the reason that fraud is ineffective to change the ownership of property obtained by means of it; that the assignee is invested with the rights of the bankrupt only, subject, of course, to all the equities which would have affected him if he had not been adjudged a bankrupt.—*Purviance, Assignee, v. Union National Bank of Pittsburgh*, vol. 8, p. 447.

**10. Purchaser with Notice.**

A purchaser, with notice, who acquires his title from a purchaser at sheriff sale, where the first purchaser had the property

knocked-off to him at a mere nominal sum by a bare-faced fraud (in this case falsely stating the sale was made subject to a mortgage of greater value than the property), takes no better title than his vendor had.—*Harrell v. Beall, Assignee*, vol. 9, p. 49.

#### 11. Under Delivery and Agreement of Sale.

Where C. & Co. had the exclusive right to sell the agricultural implements manufactured by the W. W. Co., in Oregon and Washington, and during the year 1873 C. & Co. ordered and received certain machines, with the understanding that they were to pay for them, if sold within the year, and if not, that they were "to take them for the next season," and the transaction appeared upon the invoices of the W. W. Co., and the books of C. & Co., as a sale,

*Held*, That the property in the machines passed to C. & Co. upon delivery, and upon their being adjudged bankrupts, to their assignee.—*Wood etc. Machine Co. v. Brooks*, vol. 9, p. 395.

#### 12. At Sheriff's Sale under Voidable Judgment.

A purchaser at sheriff sale, after proceedings commenced in bankruptcy, where the levy was made prior thereto, will acquire a good title notwithstanding that the judgments under which the sale took place are afterwards declared void as in fraud of the Act.—*Zahm, Assignee, v. Fry et al.*, vol. 9, p. 546.

#### 13. Payee of Cheque.

In Illinois, the payee of a cheque by presentation at the bank where payable, is thereby vested with the equitable title to so much of the money of the drawer then in the bank as will be sufficient to pay the cheque.

The title to the money, so acquired, is superior to the banker's lien for maturing paper, and will pass to, and may be enforced by the assignee in bankruptcy of the payee.—*Fourth Nat. Bank v. City Nat. Bank*, vol. 10, p. 44.

#### 14. Application of Rent to Purchase-Money.

Where a bankrupt owned property which

he had only partly paid for, and left the possession and rent of it in the seller, under an agreement that the seller was to apply the rent in the reduction of the purchase-money; this does not convey such an interest in the property back to the vendor, as will prevent the full title from vesting in the assignee in bankruptcy.—*Hall v. Scovel*, vol. 10, p. 295.

#### 15. Proceedings in Involuntary Bankruptcy Prior to Adjudication.

The provisions of Sections 39, 40, 41, 42, 43, which provide for proceedings against the bankrupt, injunctions to restrain him and others from making any disposition or transfer of his property, and for taking possession of it, do not transfer the title from the bankrupt, nor does the decree adjudging him a bankrupt, of itself, have the effect to deprive him of the title and ownership of his property; hence, until an assignee is appointed and qualified, and the conveyance or assignment made to him, the title to the property remains in the bankrupt.—*Sutherland v. Davis*, vol. 10, p. 424.

#### TORTS.

See ASSETS,  
DAMAGES,  
PROVABLE DEBTS.

#### 1. Fraudulent Recommendation.

A suit brought fraudulently recommending a person as worthy of trust and confidence is not a claim within the 14th Section of the Act which passes as assets to the assignee.—*In re Crockett et al.*, vol. 2, p. 208.

#### 2. Assault and Battery. False Imprisonment.

An action for an assault and battery and false imprisonment, being in tort for a personal injury to the plaintiff, may be prosecuted to final judgment after the petition in bankruptcy is filed, and a judgment recovered may be proved against the bankrupt's estate, for the reason that a claim of this nature is not a provable debt until final judgment, hence does not come within the language of the 2d Clause of Section 21 of the Bankrupt Act.—*In re Hennocksburch & Block*, vol. 7, p. 37

TRADER.

See ACT OF BANKRUPTCY,  
BOOKS OF ACCOUNT,  
COMMERCIAL PAPER,  
DEFINITION,  
DISCHARGE,  
FOURTEEN DAYS,  
SUSPENSION OF PAYMENT.

1. **Manufacturers of Lumber.**

One who is engaged in the manufacture and sale of lumber is a trader within the meaning of the said Act.—*Walter O. Cowles*, vol. 1, p. 280.

2. **Occasional Speculator.**

A party buying and selling goods for the purposes of gain, though but occasionally, is to be considered a merchant and trader, and must keep proper books of account, so that the creditors may learn the actual condition of his affairs.—*In re O'Bannon*, vol. 2, p. 15.

3. **Omission of, to Keep Books of Account.**

The provision of the Bankrupt Law of 2d March, 1867, that no discharge shall be granted if the bankrupt, being a merchant or tradesman, has not, subsequently to the passage of the Act, kept proper books of account, applies whether the omission to keep them has been with fraudulent intent or not.—*Solomon*, vol. 2, p. 285.

4. **Invoice and Stock-Book.**

A bankrupt who is a tradesman is not entitled to a discharge under the Bankrupt Act if he has not kept an invoice or stock-book.—*In re White*, vol. 2, p. 590.

5. **Selling Particular Articles.**

A bankrupt who has sold one carriage, one sleigh, two pairs of horses, one piano, one harness, and a part of a lot of cigars, but without ever having formed a deliberate purpose of buying goods to sell again in order to raise money, is not thereby made a merchant or tradesman within the meaning of the law, and a failure to keep proper books of account will not prevent his discharge.—*Rogers*, vol. 3, p. 564.

6. **Leasing Oil Lands.**

The owner of oil lands, who divides it into leaseholds and receives the rent in oil, is not a trader within the meaning of the Bankrupt Law, insomuch as he deals only in the products of his land. Hence, he does not commit an act of bankruptcy by any

suspension of payment of his negotiable paper for a period of fourteen days, however multiplied the transaction of his business through the leases, and however extended his credits.—*In re Woods*, vol. 7, p. 126.

TRANSFER.

See ASSIGNMENT,  
CONVEYANCES,  
FRAUD,  
HUSBAND AND WIFE,  
MISDEMEANOR,  
PARTNERS,  
PREFERENCE,  
REASONABLE CAUSE,  
SALE.

1. **Partnership Effects to One Partner.**

A *bona fide* transfer of partnership effects by one member of the partnership to another vests the title in the transferee as his separate estate.—*Byrne*, vol. 1, p. 466.

2. **Void for Want of Stamps.**

Where an instrument was given purporting to transfer certain accounts, etc., which was unstamped and for that reason void,

*Held*, That it was not an act of bankruptcy.—*In re Dunham & Orr*, vol. 2, p. 17.

3. **To Receive under State Court.**

Where a transfer of property had been made by bankrupt nine months prior to adjudication, and certain creditors preferred charges of fraud, etc.,

*Held*, The conveyance is not one which the Bankrupt Act denounces as fraud. There was no false swearing in not inserting such property in the schedules of assets, it being vested in the receiver appointed by the State court, and not in the bankrupt.—*Freeman*, vol. 4, p. 64.

4. **Transfer by Operation of Law of Policy and Insurance.**

W., on petition of his creditors, was adjudged a bankrupt, being at the time of the adjudication the owner of a dwelling-house covered by a policy of insurance, containing the following clauses: "If the title of the property is transferred, or changed," or, "if the policy is assigned, this policy shall be void." The building was destroyed by fire after the transfer by the Register to the assignee.

*Held*, That such transfer, being by ope-

ration of law, did not avoid the policy, and that the assignee is entitled to recover the insurance money.—*Starkweather, Assignee, v. The Cleveland Insurance Company*, vol. 4, p. 341.

#### 5. Takes Effect from Delivery.

Transfers of personal property, consisting of a stock of goods by an insolvent, only take effect from its delivery.—*Second National Bank of Leavenworth et al. v. Hunt, etc.*, vol. 4, p. 616.

#### 6. To Wife through Trustee.

If a father-in-law, when his son-in-law is known by him to be insolvent, and within a few days of his voluntary application to be adjudged a bankrupt, buys, out of the usual course of trade, a large portion of the insolvent's property, and gives notes payable at long dates, cashes the notes, and pays to his own son as mortgagee the money thus furnished, in discharge of a mortgage on the property of his daughter, who is the wife of the bankrupt's son-in-law, that is certainly a transfer of the bankrupt's property to his wife in fraud of his creditors through the agency of his wife's father, and therefore fraudulent and void.—*Lawrence v. Graves*, vol. 5, p. 279.

#### 7. Collusion, Execution, and Levy.

Where only one subject of an intended execution can have been in view of the parties to a confessed judgment, a levy made accordingly on that subject and a sale of it by the sheriff, though constituting in form an involuntary transfer, is, indirectly, a transfer or disposition of the property by the debtor.—*Hood v. Karper*, vol. 5, p. 358.

#### 3. Bona Fide Executing Prior Contract.

A transfer which is only the execution of a contract made when there was no circumstance to impeach it as an intended fraud on the Bankrupt Law, and when the parties were acting in good faith, and long before anything occurred to throw a suspicion over the solvency of the debtor, will be protected, and a bill brought by the assignee in bankruptcy to recover personal property conveyed under the above state of facts, will be dismissed.—*In re J. P. Wood*, vol. 5, p. 421.

#### 9. Time of.

A debtor made a transfer of real estate to his brother-in-law, who, on the same

day, re-conveyed the property to the wife of the debtor.

*Held*, That the transfer took place at the time of the actual execution and delivery of the deeds, and not at their date, and was therefore within the six months limited by the Act.—*Rooney*, vol. 6, p. 163.

#### 10. By Copartnership in Fraud.

An insolvent firm made a transfer to a creditor in fraud of the provisions of the Bankrupt Act. One of the partners died, and, within four months of the date of the transfer, the remaining partners, but not the firm, were adjudged bankrupt.

*Held*, That the assignee could not recover the property transferred by the partnership to a partnership creditor, by way of a preference or otherwise.—*Withrow v. Fowler*, vol. 7, p. 339.

#### 11. Void by Lex Loc.

A transfer of property which is void by the terms of the statute of the State where such transfer is made, is also void under the Bankrupt Law, as the United States Supreme Court will follow the construction given to such statute by the highest court in the State.—*Massey et al. v. Allen*, vol. 7, p. 401.

#### 12. From one Copartner to Another.

A transfer of firm property from one member of the firm to another, is not an act of bankruptcy within Section 39 of the Act.

Such a transfer is not a fraud upon the creditors of the firm, nor does it hinder or delay them, or constitute a preference contrary to the provisions of the Act.—*Munn*, vol. 7, p. 468.

#### 13. Transfer in Excess of Claim.

Where an insolvent debtor, in a State where he might legally prefer one creditor to another, in June, 1868, transferred to his creditor property of the value of fifty-seven thousand dollars on debt of thirty-six thousand dollars,

*Held*, The transfer of so much of the property as was in excess in value of the debt, was void, as in fraud of creditors by common law.—*Mitchell v. McKibbin*, vol. 8, p. 548.

#### 14. Knowledge of Insolvency—Effect of

Notice to creditor of an act of bankruptcy does not affect a transfer to him, otherwise than as it tends to show that he had reason

to believe that such transfer was made in fraud of the Bankrupt Act.—*Catlin v. Hoffman*, vol. 9, p. 842.

#### 15. Made at Time of Advances.

A transfer of property made at or about the time of advances, and in payment therefor, will not subject the debtor to proceedings in involuntary bankruptcy; but if made some time before the advances, it is a preference which will subject him to such proceedings.—*In re Pierson*, vol. 10, p. 107.

#### 16. For Pro Rata Distribution among Creditors.

The Bankrupt Act forbids a transfer by one insolvent to a creditor of all his property for the purpose of a *pro rata* distribution among all his creditors.—*Harrison v. McLaren*, vol. 10, p. 244.

### TRESPASS.

See COURTS,  
MARSHAL,  
SUMMARY PROCEED-  
ING,  
TORTS.

#### Marshal's Warrant Transcending Authority of Court.

Where the warrant to a marshal transcends the power conferred on a United States court by Section 40 of the Bankrupt Act, property taken possession of by the marshal from a person other than the bankrupt cannot be held by the assignee in bankruptcy. Upon the petition of one so aggrieved, the assignee will be required to deliver the property in kind, and if this is impossible, then in default to pay over the proceeds.—*Harthill*, vol. 4, p. 392.

### TROVER.

See ACTION.

#### 1. Property Transferred in Fraud of Creditors.

Where the bankrupts had knowledge of facts sufficient to bring home to the minds of reasonable men knowledge of their insolvency, they (the bankrupts) must be held to have had that knowledge, and the mortgaging and transfer to a creditor, with knowledge of these facts, of their stock of goods is in fraud of the Bankrupt Act, and an assignee in bankruptcy can maintain an action of trover to recover the value of the

property.—*Rison, etc., v. Knapp*, vol. 4, p. 349.

#### 2. Property Converted after Petition Filed in Bankruptcy.

An assignee in bankruptcy may bring trover for property converted prior to his appointment as assignee, if done after the filing of the petition in bankruptcy. If the conversion was prior to the filing of the petition he must sue in equity.—*Mitchell v. McKibbin*, vol. 8, p. 548.

### TRUST.

See ACT OF BANKRUPT-  
CY,  
CONVEYANCE,  
DEBT,  
FIDUCIARY DEBTS,  
TRANSFERS.

#### 1. In Property Purchased with Bankrupt's Money.

The trust resulting in favor of creditors, in real estate held by the wife of a bankrupt, inures as assets to his assignee, when such property was purchased by the bankrupt, prior to his bankruptcy, and paid for with his own money in fraud of his creditors.—*Meyers*, vol. 1, p. 581.

#### 2. Invested by Bankrupt in Own Name.

Where A, a merchant, holding a large sum of money belonging to B, a foreigner, was authorized to invest it in certain stock, which he did in his own name. He afterwards became bankrupt; and the certificate of stock having been deposited as security for money advanced by the Phenix Bank, could not be recovered either by the bankrupt or his solicitor. Application is made to court that the securities may be paid over to B.

*Held*, The securities must be passed to the assignee in bankruptcy. He is a creditor only for that amount, and can only participate in dividends with other creditors.—*Ungewitter*, vol. 3, p. 723.

#### 3. Not Remaining in Specie.

M. A. C. and M. C. placed in the hands of J. L. J. money to be invested by J. L. J. in trust for their benefit. J. L. J. failed to so invest the money, but used it in his speculations. He afterwards became bankrupt, and M. A. C. and M. C. petitioned to have the assignee ordered to refund the



money to them under the 14th Section of the Bankrupt Act.

*Held*, The prayer of the petition must be denied. Property held in trust does not pass to the assignee by the proceedings in bankruptcy, but it must be property that can be followed or distinguished. When the trust property does not remain *in specie*, but has been made way with by the trustee, the *cestui que trusts* have no longer a specific remedy against the estate, and must come in *pari passu* with the other creditors.—*Janevay*, vol. 4, p. 100.

#### 4. In Equity.

It makes no difference in equity whether a trust is written out by the parties, or is a creation of law.—*In re Jaycox & Green*, vol. 7, p. 803.

#### 5. Confusion of Funds.

A delivered to B, a banker, money to pay a certain note and mortgage as soon as they should be sent to him. B credited the money to A in his book, and used it in his general business. About two days before the failure of B the mortgage and note were sent to him and while waiting for instructions how to remit the amount he failed.

A petitioned the United States District Court for an order directing the assignee to pay him this money, alleging it to have been in the hands of the bankrupt as his bailee or trustee at the time of the bankruptcy.

*Held*, That this was, in reality, a claim for damages against B for not having retained and withheld the money from his general business, as a special deposit, and that there was no relief for the petitioner beyond taking his chances with the other creditors.—*In re Robert Hosie*, vol. 7, p. 601.

#### 6. Subsequent Ratification of Unauthorized Deed of.

Where an officer of a corporation, without authority, executed a deed of trust of its property as security for a negotiable instrument more than four months prior to commencement of proceedings in bankruptcy, and his act is afterwards ratified by the corporation, but within the four months prior to commencement of the proceedings, the validity of the deed must be determined by the circumstances existing

at the time of the ratification, and not by those of the time of the original execution.—*Kansas City Stone & Marble Manufacturing Company*, vol. 9, p. 76.

#### 7. Where Property does not Remain in Specie.

A banker appropriated seventy-two twenty dollar gold pieces left with him as a special deposit. The depositor filed her petition to have her debt paid in full out of the general assets. The banker being insolvent and his estate paying only twenty per cent. on the dollar.

*Held*, She could only share *pro rata* with the other creditors.

“Where the trust property does not remain in specie, but has been made way with by the trustee, the *cestui que trusts* have no longer any specific remedy against any part of his estate in cases of *bankruptcy or insolvency*, but they must come in *pari passu* with other creditors, and prove against the trust estate for the amount due them.—*King*, vol. 9, p. 140.

#### 8. Beneficiaries. Following Fund.

The beneficiaries may follow a trust fund into the hands of any one receiving it with notice of the trust.

Where an executor had invested funds of the estate in his partnership business with the knowledge and assent of his co-partner, the parties entitled to the fund may prove their debts against the partnership, although they have proved against the estate of the executor.—*Tesson*, vol. 9, p. 378.

#### 9. Substitution.—Identification of Trust Fund.

A banker held as a special deposit certain bonds of a customer, and without the customer's knowledge the banker substituted for the bonds left him a note and mortgage. The banker failed, and the customer, on being notified of the substitution, ratified the act—after the banker's insolvency was notorious, and within thirty days of the filing of the petition against him in bankruptcy. On a bill filed by the assignees in bankruptcy of the banker to recover the note and mortgage substituted,

*Held*, The substitution was valid, it being a mere exchange of property and not calculated in any way to prefer a creditor;

That there is nothing in the Bankrupt Act



to forbid one knowing himself to be insolvent, exchanging or selling his property, or otherwise disposing of it at any time previous to the filing of the petition, provided such disposition leave his estate in as good plight as formerly.

A *cestui que trust* may recover from the assignee in bankruptcy of the trustee, any property into which a portion of the trust fund in the hands of the trustee has been converted, so long as this property remains capable of distinguishment.

The right to such recovery ceases only when the means of ascertainment fail.—*Cook et al. v. Tullies*, vol. 9, p. 438.

## TRUSTEE.

See BOARD OF TRUSTEES,  
COMMITTEE,  
COMPENSATION,  
FIDUCIARY DEBT,  
TRUST.

### 1. Cannot be Member of Committee of Supervision.

It is a substantial objection to the approval of a resolution of creditors, under Section 43 of the Act, appointing a trustee and committee to supervise his action, that the committee is composed of only two, of which one is the trustee.—*In re Stillwell*, vol. 2, p. 526.

### 2. Carrying on Bankrupt's Business.

Under Section 43, the court may authorize the trustees to carry on the business of the bankrupt as if there had been no failure; and may allow formal proof of debt to be dispensed with, where the correctness is admitted.—*In re Darby*, vol. 4, p. 211.

### 3. Trustees under Arrangement.

Although the winding up and settlement of the estate are to be deemed proceedings in bankruptcy under the 43d Section of the Bankrupt Act, which contemplates the superseding of proceedings under the Act, and, in given contingencies, the "resumption" of such proceedings, yet it is evident that the true meaning is the substitution of the modes prescribed in this Section for the ordinary modes. Such proceedings are none the less "proceedings in bankruptcy" under the Act because they are special in their nature. Either *mode* can be adopted, the ordinary one or this special one. The

trustees, under direction of the committee, can wind up the estate just as the bankrupt could have done, or they may be restricted to the more limited powers and duties of ordinary assignees.—*In re Darby*, vol. 4, p. 309.

### 4. Relation of Bankrupt.

Relationship in the ninth or less degree on the part of a proposed trustee, to a bankrupt or to a creditor, even the largest in amount, of a bankrupt, or to a proposed member of the committee, or on the part of a proposed member of the committee, to such creditor, or to the bankrupt, cannot be regarded as a disqualification. Other facts may concur with relationship which would make the confirmation improper. Where three-fourths in value of the creditors who have proved their debts designate the trustee and the committee, and it does not appear that they are acting in the interest of the bankrupt, their choice will be sustained. The claim of any creditor may be investigated under Section 22, and examination of any person had under Section 26, notwithstanding the appointment of a trustee, and the assignment of the estate to him.—*Zinn et al.*, vol. 4, p. 436.

### 5. Receiver in State Court cannot be.

A receiver appointed under an order of a State court cannot be one of the trustees appointed under Section 43 of the Bankrupt Act, for the reason that he must account, if at all, as receiver, to a trustee or assignee to be appointed by the United States District Court, for the property as it stood at the date of the commencement of bankruptcy proceedings, and it is not proper that he should, as trustee, be plaintiff, and as receiver be defendant.—*Stuyvesant Bank*, vol. 6, p. 272.

### 6. Statutes of Limitation.

A was residuary legatee of B, and took the real estate subject to the payment of a certain sum to C in trust for the benefit of three of B's children, to be paid at the expiration of three years from B's death. A enjoyed the possession of this real estate some thirty years, became insolvent, was adjudicated a bankrupt in January, 1871, and the estate in question was sold by his assignee. C did not receive the sum which was to have been paid to him by A according to the terms of the will. On the ques-

tion of distribution the court held, that A was not an express or direct trustee, and that the statutory bar was a complete defence to any claim for the amount to have been paid to C as trustee.—*In re O'Neale*, vol. 6, p. 425.

#### 7. Promise to Deposit in Bank.

Where debt barred by Statute of Limitation, a promise to deposit the money in a savings bank to the account of the creditor, does not convert the relation of the parties into that of trustee and *cestui que trust*, so as to prevent the running of the statute.—*O'Neale*, vol. 6, p. 425

#### 8. Treasurer of Company.

A treasurer of a company is a trustee of the money of the company received by him as treasurer, and cannot set-off against the amount due by him for such funds, a claim against the company, of ordinary debt, as a loss on a policy in an insurance company.—*Scammon v. Kimball*, vol. 8, p. 337.

#### 9. Cannot be Purchaser at Own Sale.

A trustee cannot, as a member of a co-partnership, purchase at a sale wherein he he, as trustee, sells.—*Lockett v. Hoge*, vol. 9, p. 167.

#### 10. Holder of Note.

The holder of a note who has received a sum of money in discharge of an indorser's liability thereon, is a trustee to collect the whole amount of the note and pay to the indorser the excess over what remains due to himself.—*Talcott v. Souther*, vol. 9, p. 502.

#### 11. Surrender to Assignee.

Where the trustee of an illegally preferred creditor surrenders the trust property to the assignee in bankruptcy without suit, the creditor attempted to be preferred may prove his debt.—*Clarke v. Daughtrey*, vol. 10, p. 21.

#### 12. Assignee is Trustee of an Express Trust.

An assignee in bankruptcy being the trustee of an express trust, is not personally liable for cost in State Court, notwithstanding his being an officer of another court prevents the funds in his hands being attached by the State court.—*Reade v. Alerhouse*, vol. 10, p. 277.

#### 13. Banker Fraudulently Obtaining Deposit.

A bankrupt appropriated seventy-two twenty dollar gold pieces left with him as a special deposit. The depositor filed her petition to have her debt paid in full out of the general assets. The banker being insolvent and his estate paying only twenty per cent. on the dollar,

*Held*, She could only share *pro rata* with the other creditors.

“Where the trust property does not remain in specie, but has been made way with by the trustee, the *cestui que trusts* have no longer any specific remedy against any part of his estate in cases of *bankruptcy or insolvency*, but they must come in *pari passu* with other creditors, and prove against the trust estate for the amount due them.—*In re John King*, vol. 9, p. 140.

#### TWO YEARS.

See ASSIGNEE,  
CONCEALMENT,  
FRAUD,  
LIMITATION.

#### Applies only to Property Held Adversely.

The limitation of two years in Section 2 of the Bankrupt Act applies only to property held adversely to the bankrupt and his assignee.—*Davis v. Anderson et al.*, vol. 6, p. 145.

#### ULTRA VIRES.

See CORPORATION.

#### UNIFORMITY OF BANKRUPT ACT.

See AMENDMENT,  
BANKRUPT ACT,  
EXEMPTION,  
HOMESTEAD,  
JURISDICTION.

#### 1. Procedure in Federal and State Courts.

So far as conformity in the procedure under executions out of the Federal courts and out of the courts of the respective States, had been attained under the Act of Congress of May 19, 1828, and the rules of practice in the Federal Court, which, under the authority conferred by that Act, had, from time to time, been adopted before the

present Bankrupt Law was passed, the constitutional requirement that the system of bankruptcy should be uniform throughout the United States has been fulfilled, if the Bankrupt Law operates uniformly upon whatever would have been liable to execution if no such law had been passed, though the subjects of its operation may not be in all respects the same in every one of the States.—*In re Benjamin F. Appold*, vol. 1, p. 621.

## 2. Section 14 does not Destroy Uniformity.

The provisions of Section 14 of the Bankrupt Act, adopting the exemptions in favor of execution-debtors established by the laws of the several States, does not destroy the uniformity of the Bankrupt Act nor violate any provisions of the Federal Constitution.—*In re Beckerford*, vol. 4, p. 203.

## 3. Uniformity Contemplated.

The uniformity contemplated by the constitutional restriction was as to the general policy and operation of the law; that no preferences should be created, but the property uniformly or equally distributed among all creditors; that all questions under the Act should be decided in the same courts; that the modes and proceeding in all the courts should be uniform. Congress, by virtue of the power given it to pass a Bankrupt Law, has authority not only to impair but to destroy the obligation of contracts.—*In re Jordan*, vol. 8, p. 180.

## 4. Amendment March 3, 1873.

The amendment of March 3d, 1873, does not destroy the uniformity of the Bankrupt Act.—*In re Smith*, vol. 8, p. 401.

## 5. Contra.

The amendment of March 3d, 1873, in so far as it gives a different effect to the exemptions allowed by the States to that given by the courts of said States, is unconstitutional because it destroys the uniformity of the Bankrupt Act.—*In re Deckert*, vol. 10, p. 1.

## UNITED STATES COMMISSIONER.

See PROOF OF DEBT.

## Debt against Bankrupt may be Proven Before.

A debt against a bankrupt's estate may be proven before a United States commis-

sioner, although the bankrupt and creditor both reside in the same judicial district.—*In re Luther Sheppard*, vol. 1, p. 439.

## UNLIQUIDATED DAMAGES.

See DAMAGES,

PROVABLE DEBT.

### 1. May be Included in Assets by Way of Set-off.

Creditors filed proof of debts on an account current. Bankrupt objected, and moved to strike out all over a specific sum set out in his schedules as due the creditor, claiming that the account current was offset by claim against creditors for damages on breach of contract.

*Held*, That the claim for unliquidated damages by way of set-off should be properly included in the schedule of bankrupt's assets, and should be wholly disregarded in the proceedings for choosing an assignee.—*Freeman Orne*, vol. 1, p. 57.

### 2. Cannot be Proved against Bankrupt without Assessment.

A creditor not on the bankrupt's schedules filed a deposition setting forth a claim of unliquidated damages on a breach of contract by the bankrupt, but made no application for assessment of alleged damages.

*Held*, Such debt was not duly proved.—*In re Olough*, vol. 2, p. 151.

## UNREASONABLE DELAY.

See DISCHARGE,

STAY OF PROCEEDINGS.

## USUFRUCT.

See ASSETS.

## USURY.

See ASSETS,

ASSIGNEE,

CONTRACT,

CORPORATION,

ILLEGAL CONTRACT,

INTEREST,

JUDGMENT,

PROOF OF DEBT,

ULTRA VIRES.

### 1. National Bank.

The reservation of a greater rate of interest than six per cent. by a national

bank or discounting a promissory note, does not render the debt for the principal thereof one not provable in bankruptcy.—*In re Addison Moore, ex parte The National Exchange Bank of Columbus*, vol. 1, p. 470.

## 2. Assignee Cannot Open Judgment.

Where judgment has been rendered in favor of the plaintiff on a plea of usury, the assignee in bankruptcy of the defendant cannot open that question—he is privy to and bound by the judgment.—*McKinsey & Brown v. Harding*, vol. 4, p. 89.

## 3. Interest upon Interest.

A stipulation in a judgment that the interest on it shall bear interest if not paid annually is void, and does not make such judgment usurious.—*In re Fuller*, vol. 4, p. 116.

## 4. Note Void against Assignee for Usurious Surplus.

An assignee in bankruptcy of one of two joint makers of a note secured by a mortgage, cannot maintain a petition to declare the security void for usury, and can only contest the claim for the usurious surplus.—*Brombey, Assignee, v. Smith et al.*, vol. 5, p. 152.

## 5. Suspension of Payment of Usurious Notes.

A petition was filed against a debtor alleging that he had committed acts of bankruptcy by suspending payment of his commercial paper. The defendant answered the petition, denying that he was insolvent, and alleged that the notes in question were usurious. Answer demurred to, and demurrer overruled.—*Staplin*, vol. 9, p. 142.

## 6. Trustee can Recover only Excess of Interest Paid.

A provision in a bank charter prohibiting it from taking more than a given rate of interest avoids a contract reserving a greater rate.

A contract to do an act forbidden by law is void, and cannot be enforced in a court of justice; but it does not, therefore, follow in cases of usury, if the contract be executed, that a Court of Chancery, on application of the debtor, will assist him to recover back both principal and interest; and they will give no relief to the borrower

if the contract be executory, except on the condition that he pay to the lender the money loaned with interest; nor if the contract be executed will they enable him to recover any more than the excess he has paid over the legal interest.

It is true that usury is only predicable of an actual loan of money; and equally true that a negotiable promissory note, if a real transaction between the parties to it, can be sold in the market like any other commodity. The real test of the salability of such paper is whether the payee could sue the maker upon it when due; he could do this if it was a valid contract when made, otherwise not. Mere accommodation paper can have no effective or legal existence until it is transferred to a *bona fide* holder, and it follows that the discounting by a bank, at a higher rate of interest than the law allows, of paper of this character, made and given to the holder for the purpose of raising money upon it, in its origin only a nominal contract on which no action could be maintained by any of the parties to it if it had not been discounted, is usurious and not defensible as a purchase. The trustee cannot recover more than the excess of interest paid, as he has no larger interest than the bankrupt.—*Tiffany, Trustee, v. Boatman's Saving Institution*, vol. 9, p. 245.

## 7. Creditor Offering to Prove Usurious Debt.

A creditor offering to prove a debt against a bankrupt's estate stands in the position of a plaintiff at law; and, in Illinois, if his debt is usurious, forfeits the whole interest.—*Prescott*, vol. 9, p. 385.

## 8. Money Paid as Usury by Bankrupt.

An assignee in bankruptcy may sue for money paid as usury by the bankrupt. The right to recover this is not a personal privilege to the payor, or treated as a moral wrong by the lender; but may be enforced by the assignee of the payor against the representative of the lender, and is based upon the principle that the payment in violation of law gave no title to the lender; and the money in the hands of the lender remains the property and a part of the estate of the payor.—*Wheelock v. Lee*, vol. 10, p. 363.

### 9. Statute of N. Y. forbidding Corporations from Interposing Plea.

The effect of the Act of the Legislature of New York, Chapter 172, of 1850, which forbids a corporation from interposing the plea of usury, is to constitute the State of New York a State in which no rate of interest is fixed by law as against corporation borrowers, within the meaning of the Federal Banking and Currency Act, 18th Stat. at Large, 108.—*Ocean National Bank v. Wild*, vol. 10, p. 568.

### VACATING PROOF.

See ASSIGNEE,  
EXPUNGING PROOF,  
PRACTICE,  
PROOF OF DEBT.

### Order, by Whom Made.

An order upon a creditor who has proved his debt, to show cause why the proof of the debt should not be vacated and the record canceled, should be made by the court, and not by the Register.—*Comstock v. Wheeler*, vol. 2, p. 561.

### VALIDITY OF PROCEEDINGS.

See PROCEEDINGS IN BANKRUPTCY.

### VARIANCE.

See PLEADING,  
PROOF OF DEBT.

### 1. Misstatement of Middle Letter of Bankrupt's Name.

The statement of a wrong middle letter of the bankrupt's name in the notice sent to a creditor, is not a material variance.

*Semble*, That the return by the marshal as to the service of notice on creditors is not conclusive. Sections 12 and 13.—*In re Wm. D. Hill*, vol. 1, p. 16.

### 2. Notices to Creditors.

The exact language contained in the warrant should be copied by the messenger into the notices to creditors to be served and published, but the Register may disregard all immaterial variance and omission in the notices of the former residence stated in the warrant.—*In re John Pulver*, vol. 1, p. 47

### VERIFICATION.

See AGENT,  
PETITION,  
PLEADING,  
PRACTICE,  
PROOF OF DEBT.

### 1. Application of Assignee to Examine Bankrupt.

The application of an assignee for the examination of the bankrupt under the 26th Section of said Act need not be verified by affidavit.—*In re Lanier*, vol. 2, p. 154.

### 2. Of Creditors.

Where an order for examination of bankrupt was obtained by certain creditors through their counsel, the application for said order being neither in writing nor under oath—the bankrupt had previously applied for his discharge.

*Held*, The Register, in the exercise of his discretion (Section 26), thought proper to grant the order without requiring a petition or affidavit duly verified, showing good cause for granting the same. Nothing appears to show that that discretion was improperly exercised, and the order must stand. The time to examine the bankrupt does not expire with the making of his application for discharge.—*In re Andrew J. Solis*, vol. 4, p. 68.

### 3. Of Involuntary Petition.

When in an involuntary case the petitioners failed to subscribe the affidavit to the petition,

*Held*, The petition was defective, inasmuch as the forms prescribed by the Supreme Court required the affidavit and petition to be subscribed by petitioners. Defect incurable, since petition was not a petition in *propria forma*, such as could be amended.—*In re Moore & Bro. v. Harley*, vol. 4, p. 242.

### 4. Authorizing Agent or Attorney.

So long as it appears that, in fact, the petitioning creditor authorized the institution of the proceedings in his behalf and so became liable for costs, the matter of signing and authentication is purely formal and unimportant to any right of the debtor.

There is no express provision in the rules or orders in bankruptcy which forbids a petition to be sworn to by an agent or attorney of the petitioning creditor.

When the agent is clothed with full authority and is able to present the proper authentication of the petition required by the forms, such petition should be entertained, although the petitioning creditor does not, in person, sign or swear to it.—*In re Raynor*, vol. 7, p. 527.

#### 5. By Agent or Attorney.

Certain creditors of F. filed their petition for an adjudication in bankruptcy. Prior to this time, some of the creditors filed a bill praying that M. be restrained by writ of injunction from selling or otherwise disposing of a certain stock of goods, charged to have been fraudulently transferred by F. to M.

A motion was made to dissolve the injunction, on the ground that the bill was not sworn to by the petitioning creditor, but by an agent.

*Held*, That the affidavit of an agent or attorney is sufficient.—*Fendlay*, vol. 10, p. 250.

#### 6. Denial of Alleged Acts of Bankruptcy.

A denial of the alleged acts of bankruptcy need not be sworn to.—*In re Hawkeye Smelting Co.*, vol. 8, p. 885.

#### 7. Idem.

In courts where answers are verified in common law actions, the answer to involuntary petitions in bankruptcy must also be verified.—*In re Findlay*, vol. 9, p. 83.

#### 8. List of Creditors.

The general intent of the amended Bankrupt Act, approved June 22d, 1874, would seem to indicate that the list of creditors presented by the debtor in denial that the requisite number and amount have joined in the petition should be sworn to by him.—*In re Louis E. Steinman*, vol. 10, p. 214.

#### 9. Idem.

The 9th Section of the Act of June 22d, 1874, amendatory of the 39th Section of the Bankrupt Act, does not require the denial of the debtor, that the petitioners constitute the requisite proportion of his creditors, to be sworn to, but in the absence of a rule of the Supreme Court on the point, it is proper to require such denial to be verified by the oath of the debtor.

And for like reasons the list of his creditors filed by the debtor should be verified in like manner, by oath of the debtor.—*In re Jacob Hymes*, vol. 10, p. 433.

#### 10. Petitioners on Separate Rights.

When the petitioners, constituting one-fourth in number and one-third in value of the creditors, are less than five, it is not necessary for the person verifying the petition, as agent, to state the residence of his principals as a foundation of his right to act in the premises.

That where several petitioners join in the petition in separate and distinct rights, each stands as a separate and distinct party to the litigation so far as the right in which he prosecutes is concerned, and a verification by or on behalf of each petitioner is required.

That the court has jurisdiction when a petition is filed, notwithstanding the insufficiency of the verification, and therefore power to allow an amendment of it.—*In re Solomon Simmons*, vol. 10, p. 254.

#### VIOLATION OF AGREEMENT.

See AGREEMENT.

#### VOID AGREEMENT.

See ILLEGAL CONTRACT.

#### VOLUNTARY APPEARANCE.

See APPEARANCE.

#### VOLUNTARY BANKRUPTCY.

See BANKRUPTCY.

#### VOLUNTARY CONVEYANCE.

See CONVEYANCE,  
FRAUD,  
HUSBAND AND WIFE.

#### VOTE.

See ASSIGNEE,  
CREDITORS,  
ELECTION,  
MEETINGS,  
PARTNERS,  
PREFERRED CREDITOR,  
REGISTER,  
SECURED CREDITOR,  
SURRENDER.

#### 1. Agent, unless Partner, Cannot Vote.

An agent of a creditor proved the claim



of his principal in bankruptcy, and sought to vote for assignee.

*Held*, That he could not do so without a power of attorney.

An attorney-at-law cannot vote for his client without being duly constituted his attorney in fact.

A joint creditor who had proved the joint claim in bankruptcy sought to vote for assignee.

*Held*, That if the joint creditors were partners, he could vote the full amount of the debt; but if he was joint trustee or joint creditor, and no partner, neither could act or vote without consent and authority of the other.

A firm creditor of the bankrupt can be counted only as one creditor in the vote for assignee.

Where creditors of a firm proved claims in bankruptcy against a member who had petitioned individually,

*Held*, The private creditors only could vote for assignee.

A person to be elected assignee must receive a majority of all who have proved claims, and not simply a majority of votes cast.—*In re James J. Purvis*, vol. 1, p. 163.

## 2. Secured Creditor.

A creditor having security, may prove his claim to an amount exceeding the value of such security, without abandoning the same. He is, however, bound to set forth the value of his security, in order to vote as a creditor, in respect to the overplus proven by him, upon the choice of assignee.—*In re Henry C. Bolton*, vol. 1, p. 370.

## 3. Informal Vote.—No Choice.

There is no such thing known to the law as an informal vote. Where a vote by creditors at a first meeting results in no choice of an assignee, it is the duty of the Register to inform the creditors that the choice devolves on the judge, unless there be no opposing interest. An appointment of an assignee by the Register, although no objection was made at the time, adjudged irregular, and appointment annulled.—*In re Pearson*, vol. 2, p. 477.

## 4. Cannot Change Vote after Adjournment.

As the Register can appoint only where

there is no opposing interest, no creditor can change his vote after the meeting has adjourned, and thereby cause a failure to elect. If a mistake occurs, or the creditor has good cause to object to the choice made, he can make his objection to the judge, before whom the whole subject will be heard and determined. Where the judge refuses to approve the appointment of the assignee elected by the creditors, he may, under Section 18, clause 4, order a new election by the creditors. The fifth clause, Section 18, applies to cases where the assignee has been removed or has resigned, and not to cases where the judge disapproves the action of the creditors.—*In re Scheiffer & Garrett*, vol. 2, p. 591.

## 5. Actual Owner only can Vote.

Debts proved before election, and sold and assigned after proof, must be voted upon by the actual owner, and not by the original creditor, and the owner will be entitled to only one vote.—*In re Frank*, vol. 5, p. 194.

## 6. Creditor Secured by Mortgage on Homestead Occupied.

A creditor whose proof of debt shows that his debt is secured by mortgage on real estate of the bankrupt, but which also shows that it is the bankrupt's homestead, and is occupied by him as such, is entitled to vote upon his whole claim at the meeting of creditors for the choice of assignee.—*In re J. R. Stillwell*, vol. 7, p. 226.

## 7. Manner of Voting—Postponement.

As no particular manner of voting is presented by the Bankrupt Act, it may be taken by ballot or *viva voce*, or it may be taken by calling the name of each creditor, or by calling upon the person or persons representing creditors by power of attorney to name the choice of the creditor or creditors so represented.

The Bankrupt Act nowhere directs, nor does it seem to contemplate a postponement of the vote for assignee where some of the creditors have proven their claims, in order to enable others to do so. *Contra* it contemplates the utmost practicable expedition in choosing the assignee.

Creditors who have proved their claims and are entitled to vote for an assignee, may, if they see fit, consent to wait for

others to prove before proceeding to elect an assignee, but it is optional with them.

The taking of a vote pending a contest over the postponement of proof of claims approved.

Creditors whose proof of claims have been postponed by a Register, and who have not been allowed to vote for the assignee, if dissatisfied with the result of the vote, and if they deem the postponement of their claims erroneous, may have the proceedings certified to the court, and if the postponement is shown to have been erroneous, the court may set aside the result of the vote and direct a new vote to be taken.

The postponement of proof of claims affects no right of the creditor *except the right to vote for assignee*.

Proof of claims filed after election for an assignee will not entitle claimants to a vote thereon to change the result of an election appealed from.—*In re The Lake Superior Ship Canal, Railroad, and Iron Company*, vol. 7, p. 376.

#### 8. Changing Vote—Corrupt Voting.

A creditor may change his vote as often as he sees fit until he has signed the certificate of choice of assignee.

Where a creditor votes corruptly, as by reason of a consideration paid by bankrupt, his vote will be excluded.

An election of assignee will not be sent back because a creditor has voted corruptly, unless the result would be changed by excluding his vote. *In re John & Martin Pfromm*, vol. 8, p. 357.

#### 9. On Question of Discharge.

A creditor whose debt was contracted before January 1, 1869, should not be allowed to vote on the question of a bankrupt's discharge as to debts contracted since January 1, 1869.—*In re M. A. Parrish*, vol. 9, p. 573.

#### 10. Secured Creditor on Specific Debt.

A secured creditor may vote for assignee on so much of his debt as is unsecured, where the security applies only to a specific portion of his debt.—*In re John F. Parkes and Charles R. Parkes*, vol. 10, p. 82.

#### WAGERING CONTRACT.

##### A "Put" not a Provable Debt.

A speculative option where the object of the parties is not a sale and delivery of the goods, but a settlement in money on differences—commonly called a "put"—is a wagering contract and void, either as within the statutes against gambling or as against public policy, and is not a provable debt in bankruptcy.—*In re P. K. Chandler*, vol. 9, p. 514.

#### WAGES.

See PAYMENT,  
PRIORITY.

##### 1. Necessary Family Expenses.

Servants' wages paid after the passage of Bankrupt Act, as necessary family expenses, cannot be allowed as objection to discharge.—*Rosenfeld, Jr.*, vol. 2, p. 117.

##### 2. Assignment of Priority.

Certain workmen employed by bankrupt within six months before bankruptcy, were not paid, and applied to L. to advance money on their claims, to enable them to reach their homes, at a distance; L. to be reimbursed the advance, interest thereon, and necessary expenses incurred. An absolute assignment was executed by each to L., having been drawn by a person not a lawyer. L. applies to be paid from the bankrupt's estate the amount so advanced out of fifty dollars to be allowed to each workman as prior liens.

*Held*, The claims and demands in question should be allowed.—*Brown*, vol. 3, p. 720.

##### 3. Father of Minor Claiming.

Upon proof of claim made by the father of a minor son, for the labor of such son, as an operative in the employment of the bankrupt, within the six months next preceding the first publication of the notice of proceedings in bankruptcy,

*Held*, That the father is entitled to be preferred, to an amount not exceeding fifty dollars, according to Section 28.—*In re Harthorn*, vol. 4, p. 103.

##### 4. Net Profits—Plea of Two Years' Limitation.

When a bill in equity was brought to recover from the defendant money alleged to be due to the plaintiff, on an agreement

made by the defendant with the bankrupts to pay them as salaries for their services as clerks, certain portions of the net profits realized from the business carried on by defendant, and for an accounting, the court decided that a plea as to the Statute of Limitations was not warranted by the 2d Section of the United States Bankrupt Act of 1867, in the above case.

Plea overruled with costs, and defendant allowed to answer the bill.—*Sedgwick, Assignee, etc., v. Casey*, vol. 4, p. 496.

#### 5. Payment of Act of Bankruptcy.

Payment of wages to employees though made in the regular course of business is an act of bankruptcy if done in contemplation of insolvency; for although the law prefers an employee to the amount of fifty dollars, this preference must be secured by and through the proceedings in bankruptcy, and not outside of them or independent of and in spite of the Act.—*Kenyon & Henton*, vol. 6, p. 238.

#### 6. Preference.

When the bankrupts made an agreement with a party to pay him for certain services, the benefits of which services would accrue to the other creditors, such a claim is entitled to preference.—*In re Nounnan & Co.*, vol. 6, p. 579.

### WAIVER.

See CERTIFYING QUESTION,  
EXAMINATION,  
PRACTICE.

#### 1. Objection to Motion for Bankrupt's Examination.

Scheduled creditors filed proof of debt, and made motion for an order to examine bankrupt, before the day of first meeting of creditors. Bankrupt objected. Register granted motion after argument, and bankrupt moved the question be adjourned for decision by the court. Questions and issue were tendered, but the creditors declined to receive same or join issue. Register then declined to grant motion of bankrupt, who objected to his action, and thereupon requested questions to be certified to the judge.

*Held*, That the objection of the bankrupt to the motion for his examination raised an issue of law, which the Register should have adjourned for the judge's decision,

without any request; but such adjournment was a proceeding that might be waived, and it was waived by the bankrupt submitting the matter upon argument for the Register's decision, which disposed of it. No obligation rested on the Register after such decision to adjourn the points of the bankrupt into court.—*Chas. G. Patterson*, vol. 1, p. 100.

#### 2. Submitting to Examination Waives Objection.

Under Section 28 of the Act, the court can compel the examination of any witness; submitting to examination before Register waives such objection, and the Register should refuse to certify the question.—*In re Fredenburg*, vol. 1, p. 268.

#### 3. Unsatisfied Judgments.

Creditors waive all right of action against the bankrupt, on either their judgments or the original indebtedness, by proving their debts in bankruptcy, and all proceedings in such suits must be stayed under the 21st Section of the Bankrupt Act.—*In re Louis Meyers*, vol. 1, p. 581.

#### 4. Taking Additional Security.

Where a mortgage was given by bankrupt on five bales of cotton, while a lien existed on three hundred and twenty acres of land, in favor of mortgagee, which Register claimed was a waiver of the prior lien, *Held*, The Register was in error. The lien on the land was not waived, nor in any way affected by the mortgage on the cotton. The creditor has a valid, subsisting lien upon said three hundred and twenty acres of land; and that the opposition of bankrupt thereto be overruled. The assignee is ordered to sell said land, according to law, to satisfy said lien.—*Hutto*, vol. 3, p. 787.

#### 5. Failing to Claim Lien in Petition for Adjudication.

A creditor who has a lien upon the property of his debtors by virtue of a judgment, etc., filing a petition for adjudication of bankruptcy without reference to such lien, thereby waives and relinquishes the same, and stands before the court as an unsecured creditor.—*Bloss*, vol. 4, p. 147.

#### 6. Preference of Partnership Property for Payment of Firm Debts.

The rule that prefers partnership property to the payment of partnership debts is

for the benefit of the partners, and they may waive it.

Partners waive it by giving their notes and mortgage upon the partnership property, notwithstanding that the debts for which the notes were given were individual debts.—*Kahley et al.*, vol. 4, p. 378.

#### 7. Right to Sue—by Proof of Claim.

A creditor who has proved his debt in the bankruptcy proceedings, cannot maintain an action on the same demand against the bankrupt. His right of action in the State court as well as in the Federal courts is thus waived.—*Wilson v. Capuro & Capuro*, vol. 4, p. 714.

#### 8. By Reducing Claim below Minimum.

The receipt of payments by the petitioning creditors to an amount sufficient to reduce the indebtedness below the minimum established by the Act, must be considered as a waiver of the alleged act of bankruptcy.—*Skelly*, vol. 5, p. 214.

#### 9. Right to Proceed under Involuntary Petition by Proving under Voluntary Petition.

When creditors have proved their claims under a voluntary petition in bankruptcy they thereby waive the right to insist on going back of this and proceeding under an involuntary petition.—*In re J. F. Nounnan & Co.*, vol. 6, p. 579.

#### 10. Jury Trial.

On a motion to vacate the order to show cause, in a creditor's petition, for the reason that the verification and signature of the cashier of the bank is not a proper signature and verification, where no special authority is shown. The respondent also put in a denial of the act of bankruptcy, and demanded a jury trial.

*Held*, That the alleged bankrupt waived his objections by taking issue upon the petition and demand for trial.—*McNaughton*, vol. 8, p. 44.

#### 11. Agister of Cattle Lien.

A party who has a lien for pasturing stock by the statute of the State, waives and abandons such lien by voluntarily surrendering up the possession of the property and allowing it to be sold without claiming any lien thereon at the time.—*Mitchell*, vol. 8, p. 47.

#### 12. Proof of Loss by Insurance Company.

An insurance company while solvent, may waive a proof of loss, but an assignee in bankruptcy has no power to waive it.—*Firemans' Ins Co.*, vol. 8, p. 123.

#### 13. Provisions of By-Laws as to Transfer of Stock.

A provision in the by-laws of a corporation requiring transfer to be made upon the books may be waived by the company, and if waived at the request of a purchaser of stock, or with his assent, he becomes directly liable for future assessments.—*Upton, Assignee, v. Burham*, vol. 8, p. 221.

#### 14. Of Homestead.

In Virginia a debtor may bind himself by contract to waive the homestead exemption allowed him by the laws of that State in favor of a particular debt, and the courts will enforce and give effect to such waiver.—*In re Joseph Solomon*, vol. 10, p. 9.

#### 15. Pledgee Surrendering Pledge.

H., the bankrupt, was indebted to R. for rent of store and otherwise, and, in order to secure the debt, gave R. an absolute bill of sale of a silver cornet, which musical instrument he delivered to R., telling him he could hold it as long as he stayed on the premises, and until the rent was paid. Subsequently H. borrowed the cornet to use, and agreed to return it after using it, but had the exclusive possession of it several months before he went into bankruptcy.

On the petition of R. to have his lien upon the cornet enforced, etc.,

*Held*, That he had waived and surrendered whatever right he might otherwise have had under the bill of sale; that the transaction was a pledge and not a mortgage.—*In re Harlow*, vol. 10, p. 280.

#### WANT OF NOTICE.

See BANKRUPT,  
DISCHARGE,  
NOTICE.

#### Is a Formal Objection.

Want of notice to a bankrupt is a formal objection well taken, as the bankrupt has an interest in the continuance of proceedings which may result in his discharge.—*In re Bush*, vol. 6, p. 179.

## WAR.

See DEBT,  
INTEREST,  
PAYMENT,  
PROOF OF DEBT,  
TIME.

### 1. Interest.—Beginning and Termination of the War between the States.

Interest should not be allowed for the period during which intercourse between the parties and between the parts of the country in which they respectively lived, was suspended by our late civil war. *Held*, the proclamation declaring the blockade of the ports of the insurgent States must be regarded as the first formal recognition of the existence of civil war by the national Government. That the period of its termination has not been so definitely ascertained. That it was declared by the President and Congress to have ended August 2, 1866, which date has been recognized by the Supreme Court in various cases, but in a case involving the effect to be given to the Statute of Limitations, the court declined fixing any date as applicable to all cases. In this case, as applicable to Virginia, the court fixed the date on the 26th of May, 1865. That, in computing interest, the time from April 19th, 1861, to May 26th, 1865, should be excluded.—*Bigler v. Waller*, vol. 4, p. 291.

### 2. Acts of Legislature.—Southern States after Secession.

After the passage of the so-called ordinance of secession, all acts passed by any pretended legislature are void.—*Rankin, etc., v. Florida, etc., R. R. Co.*, vol. 1, p. 647.

### 3. Enforcement of Ante-War Statutes.

The government organized in the States lately in insurrection, by direction of the President, are by act of Congress declared provisional, with full power to execute such laws as were in force prior to the passage of the so-called ordinance of secession.—*Rankin, etc., v. Florida, etc., R. R. Co.*, vol. 1, p. 647.

### 4. Accepting War-Bonds as Payment.

The plaintiff, at various times prior to and on the 16th day of June, 1862, had made deposits with the Bank of North Carolina. On the 30th day of March, 1864, his account with the bank was made up, and

the sum of \$5,253.69, ascertained to be due to him. On that day Holleman drew and delivered to the bank his cheque, in the usual form, for the full sum due to him, and accepted in part payment for the cheque five coupon bonds, issued by the State of North Carolina, on the 1st day of January, 1863, which were issued in aid of the rebellion.

*Held*, That such bonds, when accepted by a creditor in payment of his debt, and while they are of value as a medium in the money markets, constitute a valid medium for the payment of a debt, provided the contract or engagement in which they are used was not a contract made in aid of the rebellion.—*Wm. H. Holleman v. Charles Dewey*, vol. 7, p. 269.

### 5. Current Money of the State.

Proof of a note payable "in current money of the State" in which it is made, is, if not otherwise open to objection, allowable; and even though the State in which the note is made payable should at the maturity of the note be in rebellion, and it be claimed that such a demand should not be proved in bankruptcy as payable in lawful currency of the United States, but in the State treasury notes of the State in which the note was made, the objection cannot be sustained, and the owner of the note will be entitled to have his debt estimated at its face, with interest, in lawful money.—*In re Whittaker*, vol. 4, p. 160.

## WARRANT.

See ADJUDICATION,  
DEATH OF BANK-  
RUPT.

### 1. Unknown Residence.

Where the warrant stated present residences as unknown, yet stated former residences of creditors, and the marshal returned notices mailed to such creditors, residences unknown,

*Held*, Such notice was good.—*Pulver*, vol. 1, p. 47.

### 2. Time of Issuing.—Death of Bankrupt.

So far as may be necessary to prevent a discontinuance of proceedings in bankruptcy, by the death of the bankrupt, as provided in the 12th Section of the Act, the warrant is, in the view of the law, issued



*eo instanti* with the entering of the order of adjudication, though it should be physically issued for a month thereafter.—*E. C. Litchfield*, vol. 9, p. 506.

## WATCHMAN.

**By Register to Care of Bankrupt's Property.**

The bankrupts surrendered their property to the Register, who appointed a watchman to guard and keep it, and submitted a report of his action to the district judge for approval, who ordered the United States commissioner to take testimony as to the facts.—*In re Bogert & Evans*, vol. 2, p. 585.

## WIDOW.

See DOWER,  
EXEMPTION,  
TITLE.

**1. Dower.**

The widow of a bankrupt, whose petition in bankruptcy was filed after the Act passed by the Legislature of North Carolina, repealing the statutory provision and restoring the common law right of dower, the bankrupt dying after the issuing of the warrant in bankruptcy, is entitled to dower in the land owned by the bankrupt at the time of the filing of his petition. The Act referred to repealed the statutory provision in regard to dower, which in effect restored *eo instanti* the common law. The Legislature by that Act attempted to create additional exemptions to those theretofore allowed by law; those exemptions are void as to creditors whose debts were contracted previous to the passage of the Act.—*In re Hester*, vol. 5, p. 285.

**2. Exemptions.**

The widow of a bankrupt is not entitled to the personal property exempted by the provisions of Section 14 of the Act of 1867, nor is the assignee in bankruptcy. No title to exempt property passes to the assignee by the assignment; it remains in the bankrupt; at his death it passes to his legal representatives.—*Hester*, vol. 5, p. 285.

## WIFE OF BANKRUPT.

## WIFE OF BANKRUPT.

See ASSETS,  
ASSIGNMENT,  
BANKRUPT,  
CONCEALMENT,  
CONVEYANCE,  
EXAMINATION,  
EVIDENCE,  
FRAUD,  
JURISDICTION,  
SETTLEMENT ON,  
TRUST.

**1. Order for Examination of.**

The order for bankrupt or his wife to attend and be examined (Form No. 45) is in the nature of a summons, and may be furnished in blank in the registers, signed and sealed by the clerk.—*In re John Bellamy*, vol. 1, p. 64.

**2. Applied for, to Oppress.**

Where assignee, who was also a creditor, neglected to make his report on the return day of the order to show cause why bankrupt should not be discharged, but subsequently appeared before the Register and applied for an order for examination of bankrupt's wife.

*Held*, That such order should be refused, as it did not appear to have been made in good faith.—*In re Moses Selig*, vol. 1, p. 186.

**3. Entitled to Witness Fees.**

The wife of a bankrupt is entitled to witness fees for attendance and travel.

Such fees are to be those prescribed for witnesses by Section 3 of the Fee Bill, Act of February 26, 1853.—*Griffen*, vol. 1, p. 371.

**4. Separate Property not to Affect Exemption.**

The fact that the wife may have, as her separate property, household and kitchen furniture in use in the house in which the bankrupt resides, can make no difference as to the amount of exempt property to be allowed the bankrupt.—*Cobb*, vol. 1, p. 414.

**5. Property Purchased with Business Money.**

The trust resulting in favor of creditors, in real estate held by the wife of a bankrupt, inures as assets to his assignee, when



such property was purchased by the bankrupt, prior to his bankruptcy, and paid for with his own money in fraud of his creditors.—*Myers*, vol. 1, p. 581.

#### **6. Husband's Property with Her Separate Funds.**

Where all of a bankrupt's right and title to property has been sold by creditors under judgment and execution, and purchased by his wife with her own separate funds, he has no title or estate in such property which he could be required to report in his schedules, and, hence, its omission cannot subject him to the penalties for false swearing.—*In re Pomeroy*, vol. 2, p. 14.

#### **7. Witness Fees prior to Examination.**

The wife of a bankrupt is not bound to appear and be examined, unless she is paid the usual and proper witness fees.—*Van Tuyl*, vol. 2, p. 70.

#### **8. Penalty for Failing to attend Examination.**

The penalty for disobedience of the wife to attend and be examined, is visited upon the bankrupt by refusing him a discharge.—*Van Tuyl*, vol. 2, p. 70.

#### **9. Partner of Husband.**

Where the wife of a bankrupt had with her own money bought out the interest of a retiring member of an insurance broker's firm, which employed the bankrupt ostensibly as clerk, at a percentage of profits in lieu of salary, and the shares of the wife and the bankrupt did not exceed the fair remuneration of the bankrupt for his services to the firm, which he was mainly instrumental in building up and conducting, the annual profits whereof were thirty-five thousand dollars,

*Held*, That the bankrupt was virtually a partner, and swore falsely when he stated in his schedules that he had no assets. Fraud is scarcely ever made out by direct evidence, hence the proof must be generally arrived at by the interweaving of circumstances.—*Rathbone*, vol. 2, p. 261.

#### **10. Proof against Husband's Estate for separate Debt.**

Where a wife deposited money of her own with her husband for safe-keeping before bankruptcy, and from time to time

received from him portions thereof, but left a balance of seven hundred dollars in his hands, upon adjudication in bankruptcy,

*Held*, That she was entitled to prove as a general creditor on that account.—*In re Bigelow et al.*, vol. 2, p. 556.

#### **11. Failure to Attend and be Examined.**

The Register issued an order for the wife of a bankrupt to attend and be examined as a witness, and the order was served upon the husband. The wife failed to attend.

*Held*, That the order was properly issued, and the bankrupt is not properly entitled to a discharge unless he proves satisfactorily that he could not obtain his wife's attendance.—*Van Tuyl*, vol. 2, p. 579.

#### **12. To Examine—Right.**

It is the practice of this court to order an examination of the bankrupt's wife only when a *prima facie* case is made out by affidavit. The wife may be examined when on reasonable grounds she is suspected of having, or of having had, property in her possession, which should have been surrendered to the creditors, or to have participated actively in any other fraud upon the statute.—*J. F. Gilbert*, vol. 3, p. 152.

#### **13. Refusing to Appear.**

Where a bankrupt's wife refuses to appear, the proper proceeding is to issue an order to show cause why an attachment should not issue against her.—*Beltis & Milligan*, vol. 3, p. 271.

#### **14. Punished for Contempt.**

The wife of a bankrupt may be summoned and compelled to attend and be examined as any other witness, and may be punished for contempt if she refuses to answer.—*Woolford*, vol. 3, p. 444.

#### **15. Subject on which Examined.**

Where wife of a member of a bankrupt firm loaned the firm, previous to its bankruptcy, moneys arising from the sale of property which had been held in her husband's name, but the proceeds of which were promised to her in consideration of her executing a deed therefor, said moneys not appearing on the firm books to the credit of the wife, but to the credit of her husband as a member of the firm, no separate account appearing in the husband's

separate account-books, except under the head of family expense—and where the husband purchased as the agent of his wife, in her absence from home, real estate which was conveyed to her in her own name, and which real estate was improved by his wife through her husband, as her agent, and the implements paid for by the firm cheques, as in payment to her of her loans to the firm. This testimony being objected to as immaterial and irrelevant, and given under and subject to such objections, and the questions as to what estate said bankrupt's wife had, and had she any estate except the property above referred to, and was she possessed of thirty-seven thousand dollars, being also objected to,

*Held*, The questions must be answered.—*In re Clark, West, Maxwell, & Davis*, vol. 4, p. 237.

#### 16. On Proceedings to Vacate Husband's Discharge.

Upon a motion to set aside a discharge granted to a bankrupt, the wife of the bankrupt cannot be required to testify as a witness against her husband.—*Tenny & Gregory v. Collins*, vol. 4, p. 477.

#### 17. Proceeds of Separate Estate.

The bankrupt's wife may prove as a creditor against his estate in bankruptcy, for money realized by him out of her property which she held as her separate estate under the statutes of Massachusetts, if the evidence clearly shows that the transaction was intended to be a loan and not a gift.—*In re Blandin*, vol. 5, p. 39.

#### 18. Estopped by Allowing Husband to Obtain Credit on Her Property.

A debtor conveyed his farm to his wife but did not record the deed until seven years after its execution; during this time, however, he appeared as the owner. Being adjudged a bankrupt, his assignee filed a bill to obtain a conveyance of this property to him (the assignee) for the benefit of the creditors. The wife claimed that the money paid for the property was her's, giving this as a reason why she held the conveyance, and denied any intention of hindering or defrauding her husband's creditors.

The evidence showed that the husband purchased the farm on a contract made to himself, but that after the first installment of purchase money was paid, the property

was conveyed to the wife. Further payments were made until about half the amount agreed upon was paid.

At the time the conveyance was made to the wife the bankrupt was considerably in debt, which indebtedness constituted a portion of his liabilities in the bankruptcy proceedings. Almost all of the money paid on the farm was from proceeds of property, the title to which at the time of sale was in the bankrupt, which property was partly paid for by the wife with money earned by herself after her marriage.

The court decided that if a married woman consents to the purchase of property with her means by her husband and in his own name, she cannot afterwards reclaim the property as against his creditors, whose debts accrued while the property was so held by him.—*Keating, Assignee, etc., v. Keefer*, vol. 5, p. 135.

#### 19. Settlement on, Reserving Sufficient to Pay Debts.

A husband may make a settlement of property on his wife, when he is solvent, and pecuniarily in a condition to make such a gift, if it is not unreasonable in amount, and if after making it he still has abundant assets to pay those debts which he owed at that time.—*Sedgwick v. Place et al.*, vol. 5, p. 168.

#### 20. Insurance of her Life for her Husband's Benefit—Dying after his Adjudication.

Where a wife, possessed of a separate estate, procured a policy of insurance upon her life, payable upon her death to her husband, and paid the premiums out of her own estate for a year, before the end of which he was adjudicated a bankrupt, and where she paid out of her own estate the premiums for the two following years, and before the fourth premium became due she died,

*Held*, That the husband, as against the assignee in bankruptcy, was entitled to the proceeds of the policy.—*In re Owen & Murrin*, vol. 8, p. 6.

#### 21. Contingent Claim of Dower.

A claim for a breach of covenant that the grantor has an indefeasible estate in fee in land sold—the claim arising from the right of his wife, yet living to be endowed of the estate—is of this character during the life

of the husband.—*Riggin v. Maguire*, vol. 8, p. 484.

## 22. Using Wife's Income for Support of Family.

Where a wife allows her husband to appropriate the *income* of her separate estate in the support of the family, this does not create such a debt on his part as is provable in bankruptcy against his estate.

*Aliter*, Where the principal of her separate property is allowed to be used by the husband.—*In re Jones et al.*, vol. 9, p. 556.

## WITHDRAWAL OF PAPERS.

See COURT,  
ENDORSER,  
PROOF OF DEBT,  
REGISTER.

### 1. Court may Allow.

Original papers referred to in bankrupt's deposition, and annexed thereto, cannot be withdrawn from the files at the option of the bankrupt. The court may order a withdrawal for good reason shown by a party interested.—*In re McNair*, vol. 2, p. 343.

### 2. Register Cannot, after Sending to Assignee.

The Register cannot order or permit the withdrawal of a proof of debt after he has passed upon the same, allowed, certified, and transmitted it to the assignees.—*In re McIntosh*, vol. 2, p. 506.

### 3. Proof of Debt.

Proof of debt cannot be withdrawn from the files by the creditor.

*Semble*, That it may be waived.—*In re Emison*, vol. 2, p. 595.

### 4. Idem.

An agent of a creditor filed and proved a claim, but not having a power of attorney to vote for assignee, sought to withdraw the proof of said claim, partly for the reason that he had not stated in his deposition that the creditor held promissory notes not yet due, and had agreed to discharge the claim on their payment.

*Held*, That neither proof of debt nor deposition could be withdrawn, but the creditor ought to be allowed and required to amend his proof.—*In re James M. Lowerce*, vol. 1, p. 74.

### 5. Filed in Incorrect Form, through Inadvertence.

Where a creditor who has ample security for his claim makes proof of the same, without mentioning the security, through inadvertence and ignorance of the law, an order will be entered granting to the said creditor leave to withdraw his proof, and restoring to him his rights, as though no proof had been filed.—*In re Clark & Binger*, vol. 5, p. 255.

## WITNESS.

See BANKRUPT,  
COST AND FEES,  
EXAMINATION,  
MARSHAL,  
SUBPOENA.

### 1. Notice to Bankrupt of Examination.

Where an examination of bankrupts by creditors had been commenced and adjourned over, and the assignee summoned a witness in the meantime for examination as to bankrupts' property, without notice to bankrupts,

*Held*, It was not necessary to give notice to bankrupts of time and place of examination of witness, and the same could be proceeded with without reference to the examination by creditors.—*In re Samuel W. Levy & Mark Levy*, vol. 1, p. 107.

### 2. Bankrupt Attending as Privileged from Arrest.

While on his way to be examined as a witness under an order of the Register, a bankrupt was arrested on *mesne process* issued by a State court.

*Held*, That the arrest was a violation of his privileges, and that he was entitled to be discharged.—*In re George W. Kimball*, vol. 1, p. 193.

### 3. Counsel for an Anomaly.

Where a witness objects, by counsel, to examination, on the ground that there was no question in controversy to be settled by testimony, and that the examination of witnesses is not in order until after an examination of the bankrupt,

*Held*, "Counsel for witness" is an anomaly leading to confusion and delay.—*In re Fredenburg*, vol. 1, p. 268.

### 4. Wife of Bankrupt—Tender of Fees.

The wife of a bankrupt is entitled to

witness fees for attendance and travel. Such fees are to be those prescribed for witnesses by the 3d Section of the Fee Bill, Act of February 26, 1853.

The fees of a witness must be tendered or paid to him at the time of the service of the summons or a subpoena.—*In re William Griffen*, vol. 1, p. 371.

#### 5. Time to Examine.

The time to examine witnesses does not expire by the bankrupt filing his petition for a discharge.—*In re Seckendorf*, vol. 1, p. 626.

#### 6. Examination of Bankrupt regarded as an Examination of.

The examination of the bankrupt must be regarded in the nature of the examination of a witness. There is no good reason why any one possessing information may not be required to submit to an examination.—*In re Blake*, vol. 2, p. 10.

#### 7. Subjects of Examination.

A witness cannot rightfully object to being sworn or refuse to be examined upon any matters which shall be within the subjects mentioned in Section 26 of the United States Bankrupt Act of 1867.—*In re Blake*, vol. 2, p. 10.

#### 8. Fishing for Specification against Discharge.

The Register has no right to summon witnesses for the purpose of eliciting facts that may assist the creditors in preparing their specifications in opposition to the bankrupt's discharge. It is proper, however, to call the bankrupt before him to answer questions touching his bankruptcy. A Register may do anything required to be done by the court within the provision of the Bankrupt Law unless a controversy shall arise, in which event the question raised before him must be certified to the judge for his decision.—*In re Brant*, vol. 2, p. 215.

#### 9. Bankrupt Summoned as.

A bankrupt summoned by creditor to appear as witness is not entitled to witness fees.—*In re McNair*, vol. 2, p. 219.

#### 10. Contempt—Absence of Interrogatories from Commission.

On an application for attachment of witnesses for contempt in not making

answers on examination under a commission,

*Held*, That attachment must be refused, for the reason that no written interrogatories accompanied the commission, and no information furnished as to the particular inquiry.—*In re Samuel Glaser*, vol. 2, p. 398.

#### 11. Creditor not Entitled to Fees for Attendance as.

A creditor is not entitled to witness fees for attendance under this order; if, however, he cannot personally attend in this district without hardship, the court will provide for his being examined before a Register in the district where he resides.—*In re Morris Kyler*, vol. 2, p. 650.

#### 12. Examination of Lawyer as to Privileged Communications.

A witness, who was a lawyer, being under examination, was questioned touching a certain conveyance made to him by the bankrupt and wife, and a subsequent conveyance by him to the wife, and refused to testify thereon as matter within the privilege of confidential communications between attorney and client.

*Held*, On the facts stated, the questions were proper, and must be answered, and are not within such privilege.—*Bellis & Milligan*, vol. 3, p. 199.

#### 13. Trade and Dealing with Bankrupt.

Witness must answer all proper questions relating to his trade and dealings with the bankrupt prior to bankruptcy, and if necessary to answer such questions must produce any book containing the transactions with the bankrupt.—*Earle*, vol. 3, p. 304.

#### 14. Experts.

Witness, who is called as an expert, has passed his direct examination, showing that the debtor has falsified some of his books of account, etc. On his cross-examination he refused to answer questions irrelevant to the matter at issue, claiming the protection of the Register, and pleading that a truthful answer would bring upon him moral turpitude, or would tend to degrade and humiliate him. The witness is a foreigner, and the question asked referred to time previous to his residence in the United States.

*Held*, That as the question put to the witness did not relate to any matter of fact in issue, or to any matter contained in his direct testimony, and as a truthful answer to it would tend to degrade him, he was not bound to answer it.—*H. Lewis*, vol. 3, p. 621.

#### 15. Privilege.

A witness cannot refuse to answer questions concerning his dealings, etc., with the bankrupt, on the ground that his answer may furnish evidence against him in a civil case, brought or to be brought on behalf of the assignee.—*In re G. P. & B. W. Fay*, vol. 3, p. 660.

#### 16. Legal Adviser cannot Refuse to be Sworn.

Where a legal adviser refuses to be sworn as a witness,

*Held*, The right to refuse to answer a question on the ground of privilege, does not warrant a refusal to be sworn as a witness.—*Woodward*, vol. 3, p. 719.

#### 17. Extent of Examination.

On examination under Section 26 of the Act, the bankrupt or witness may be examined fully, substantially as under a reference upon a creditor's bill, or in supplementary proceedings under the code.—*Pioneer Paper Co.*, vol. 7, p. 250.

#### 18. Dealings with Bankrupt.

A witness is not entitled to counsel in his examination before the Register, although the examination of the witness may establish a liability on his part to the bankrupt.

A question relating to transactions between the witness and the bankrupt must be answered.—*In re Stuyvesant Bank*, vol. 7, p. 445.

### WRIT OF ERROR.

See APPEAL,  
MANDAMUS,  
REVIEW.

#### 1. Mandamus—Proper Remedy to Compel Hearing of.

Where respondent demands a jury trial on the return day, and upon such trial the court gives to the jury what is claimed to be erroneous charges, the Circuit Court has jurisdiction to review these rulings.

The proper mode of bringing the questions before the court is by writ of error. This writ must be sued out according to the provisions of the Judiciary Act in all respects, except that it must be applied for within ten days.

Where the Circuit Court dismissed a writ of error properly sued out, for want of jurisdiction, the proper mode to apply for the interposition of the Supreme Court of the United States is by the writ of mandamus, not by writ of error.—*Knickerbocker Insurance Co. v. Comstock et al.*, vol. 8, p. 145.

#### 2. Judgment—Provable Debt Pending.

At common law a writ of error and *supersedeas* of execution leaves the judgment intact, and it is a provable debt in bankruptcy.

Where a judgment on which a *supersedeas* and stay of execution has been granted by the State court, pending the decision of a writ of error, is proved in bankruptcy, the court will stay the payment of any dividends on the claim during the pendency of the writ of error.—*In re Sheehan*, vol. 8, p. 345.



## TABLE OF CORRESPONDING NUMBERS.

Volumes I. to IV. of the National Bankruptcy Register Reports were originally published in quarto form, and the reprints in octavo having been issued just previous to the completion of Volume IX. of the Reports, all the original references to cases reported in Volumes I. to IV. refer to the old, quarto paging.

The Table below is to give the octavo paging of a reference to a quarto edition. The Roman numerals and figures inclosed in parentheses refer to the quarto paging; the numbers succeeding, the octavo pages where the case will be found in the reprints.

### VOLUME I.

(i) 1, 2, 3; (ii) 4, 5, 6, 7, 8, 9; (iii) 10, 11, 12, 13, 14; (iv) 15, 16, 17, 18; (v) 19, 20, 21, 22, 23; (vi) 24, 25, 26, 27, 28; (vii) 29, 30, 31, 32; (viii) 33, 34, 35, 36, 37; (ix) 38, 39, 40, 41, 42; (x) 43, 44, 45, 46; (xi) 47, 48, 49, 50, 51; (xii) 52, 53, 54, 55, 56; (xiii) 57, 58, 59, 60; (xiv) 61, 62, 63, 64, 65; (xv) 66, 67, 68, 69, 70; (xvi) 71, 72, 73, 74, 75; (xvii) 76, 77, 78, 79; (xviii) 80, 81, 82, 83, 84; (xix) 85, 86, 87, 88; (xx) 89, 90, 91, 92, 93; (xxi) 94, 95, 96, 97, 98; (xxii) 99, 100, 101, 102; (xxiii) 103, 104, 105, 106, 107; (xxiv) 108, 109, 110, 111, 112; (xxv) 113, 114, 115, 116, 117; (xxvi) 118, 119, 120, 121, 122, 123, 124, 125, 126; (xxvii) 127, 128, 129, 130, 131; (xxviii) 132, 133, 134, 135; (xxix) 136, 137, 138, 139, 140; (xxx) 141, 142, 143, 144, 145; (xxxi) 146, 147, 148, 149, 150; (xxxii) 151, 152, 153, 154, 155; (xxxiii) 156, 157, 158, 159; (xxxiv) 160, 161, 162, 163, 164; (xxxv) 165, 166, 167, 168, 169; (xxxvi) 170, 171, 172, 173; (xxxvii) 174, 175, 176, 177, 178, 179; (xxxviii) 180, 181, 182, 183; (xli) 184, 185, 186, 187, 188; (xlii) 189, 190, 191, 192, 193; (xliii) 194, 195, 196, 197; (xliv) 198, 199, 200, 201, 202; (xlv) 203, 204, 205, 206, 207; (xlvi) 208, 209, 210, 211; (xlvii) 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227; (10) 228, 229, 230, 231; (11-16) 232, 233, 234, 235, 236, 237; (17) 238, 239, 240, 241, 242; (18-24) 243, 244, 245, 246, 247; (26) 248, 249, 250, 251; (27) 252, 253, 254, 255, 256; (28) 257, 258, 259, 260, 261, 262; (29) 263, 264, 265, 266, 267; (34) 268, 269, 270, 271; (41) 272, 273, 274, 275; (42) 276, 277, 278, 279, 280, 281; (43) 282, 283, 284, 285; (49) 286, 287, 288, 289, 290; (50) 291, 292, 293, 294, 295; (51) 296,	297, 298, 299, 300, 301; (52) 302, 303, 304, 305, 306, 307, 308, 309, 310, 311; (59) 312, 313, 314, 315, 316; (60) 317, 318, 319, 320, 321, 322; (61) 323, 324, 325, 326, 327, 328, 329; (66-67) 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340; (74) 341, 342, 343, 344, 345, 346; (75) 347, 348, 349, 350, 351; (76) 352, 353; (81) 354, 355, 356, 357, 358; (82) 359, 360, 361, 362, 363, 364, 365; (83) 366, 367, 368, 369, 370, 371, 372; (84) 373, 374, 375, 376, 377, 378; (89) 379, 380, 381, 382; (90) 383, 384, 385, 386, 387; (91) 388, 389, 390, 391, 392, 393, 394; (92) 395; (97) 396, 397, 398; (98) 399, 400, 401, 402, 403, 404, 405; (99) 406, 407, 408, 409, 410; (105) 411, 412; (106) 413, 414, 415, 416, 417, 418; (107) 419, 420, 421, 422, 423; (108) 424, 425, 426; (113) 427, 428, 429, 430; (114) 431, 432, 433, 434, 435; (115) 436, 437, 438, 439, 440; (116) 441, 442, 443, 444, 445, 446; (117) 447, 448, 449, 450, 451; (118) 452, 453, 454, 455, 456, 457, 458, 459, 460, 461; (122) 462, 463, 464, 465, 466, 467; (123) 468, 469, 470, 471, 472, 473; (124) 474, 475, 476, 477, 478; (125) 479, 480, 481, 482, 483; (126) 484, 485, 486, 487, 488, 489; (130) 490, 491, 492, 493, 494, 495; (131) 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511; (134) 512, 513, 514, 515, 516; (137) 517, 518, 519; (138) 520, 521, 522, 523, 524, 525; (139) 526, 527, 528, 529, 530; (140) 531, 532, 533, 534, 535, 536; (141) 537, 538, 539, 540, 541; (146) 542, 543, 544, 545, 546, 547; (147) 548; (153) 549, 550, 551, 552; (154) 553, 554, 555, 556, 557; (155) 558, 559, 560, 561, 562, 563; (156) 564, 565, 566, 567, 568, 569; (157) 570, 571, 572, 573, 574; (158) 575, 576, 577, 578, 579; (162)
--	--



580, 581, 582, 583, 584; (168) 585, 586, 587, 588, 589, 590, 591; (164) 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603. (170) 604, 605, 606, 607, 608; (171) 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, (172) 623, 624, 625, 626, (185) 627, 628, 629; (186) 630, 631, 632, 633, 634, 635, (187) 636; (198) 637, 638, 639, 640, 641; (195) 642, 643, 644, 645, 646, 647, (196) 648, 649, 650, 651, 652; (197) 653, 654, 655, 656, 657; (198) 658, 659, 660, 661, 662, 663; (202) 664, 665, 666, 667, 668, (203) 669, 670, 671, 672, 673, 674, 675, 676.

Octavo pages 676 to 693 contain additional cases without corresponding numbers in quarto.

## VOLUME II.

(1) 1, 2, 3, 4, 5, 6, 7 (2) 8, 9, 10, 11, 12, 13, 14, (4) 15, 16, 17, (5) 18, 19, 20, 21, 22, (10-11) 23, 24, 25, 26, 27, 28, (12) 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, (14) 44, 45, 46, 47, 48, 49, (18) 50, 51, 52, 53, 54, 55, 56, 57, 58, 59; (20) 60, 61, 62, 63, 64, 65, 66, 67, 68; (21) 69, 70, (22) 71, 72, 73, 74, 75, 76, 77; (27) 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, (29) 88, 89, 90, 91, 92, 93, 94, 95, 96, (34) 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, (36) 107, 108, 109, 110, (44) 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128; (51) 129, 130, 131, 132, 133, 134; (52) 135, 136, 137, 138, 139; (53) 140, 141, 142; (57) 143, 144; (58) 145, 146, 147, 148, 149; (59) 150, 151, 152, 153, 154; (60) 155, 156, 157, 158, 159, 160; (61) 161, 162, 163, 164, 165; (62) 166, 167, 168, 169, 170, 171; (65) 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183; (67) 184, 185, 186, 187, 188, 189; (68) 190, 191, 192, 193, 194; (69) 195, 196, 197; (78) 198, 199, 200, 201; (74) 202, 203, 204, 205, 206, 207, 208; (75) 209, 210, 211, 212; (76) 213, 214, 215, 216, 217, 218, 219, (77) 220, 221, 222, (78) 223, 224, 225, 226, 227, 228, 229; (80) 230, 231, 232, (81) 233, 234, 235, 236, (82) 237, 238, 239, 240, 241, (83) 242, 243, 244, 245, (84) 246, 247, 248, 249, 250, 251, 252, 253, 254, (85) 255, 256, 257, 258, 259, 260, 261, 262, 263; (90) 264, 265, 266, 267; (91) 268, 269, 270, 271, 272, (92) 273, 274, 275, 276, 277, 278, (93) 279, 280, 281, 282, 283; (94) 284, 285, 286, 287, 288, 289; (95) 290, 291, 292, 293, 294; (97) 295, 296, 297; (98) 298, 299, 300, 301; (99) 302, 303, 304, 305, 306, (100) 307, 308, 309, 310, 311; (101) 312, 313, 314, 315, 316, 317; (102) 318, 319, 320, 321, 322, 323, 324; (105) 325, 326, 327; (106) 328, 329, 330, 331, 332, (107) 333, 334, 335, 336, 337, (108) 338, 339, 340, 341, 342, 343; (109) 344, 345, 346, 347, 348, 349; (110) 350, 351, 352, (114) 353, 354, 355, 356, 357, 358; (115) 359, 360, 361, 362, 363, 364, 365, 366, 367, 368; (116) 369, 370, 371, 372, 373, 374, 375, 376, 377, 378; (117) 379, 380, 381, 382, 383, 384, 385, 386, 387, 388; (118) 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417; (119) 418, 419, 420, 421, 422; (120) 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437; (121) 438, 439, 440, 441, 442, 443, 444, 445, 446, 447; (122) 448, 449, 450, 451, 452, 453, 454; (123) 455, 456, 457, 458, 459; (124) 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470; (125) 471, 472, 473, 474, 475, 476; (126) 477, 478, 479, 480, 481; (127) 482, 483, 484, 485, 486, 487, 488; (128) 489, 490, 491, 492, 493; (129) 494, 495, 496, 497, 498; (130) 499, 500, 501; (131) 502, 503, 504, 505, 506, 507; (132) 508, 509, 510, 511, (133) 512, 513, 514, 515; (134) 516, 517, 518, 519, 520; (135) 521, 522, 523, 524, 525; (136) 526, 527, 528, 529, 530, 531, 532; (137) 533, 534, 535, 536, 537; (138) 538, 539, 540, 541, 542, 543; (139) 544, 545, 546, 547, (140) 548, 549, 550, 551; (141) 552, 553, 554, 555, 556; (142) 557, 558, 559, 560, 561; (143) 562, 563, 564, 565; (144) 566, 567, 568, 569; (145) 570, 571, 572, 573, 574; (146) 575, 576, 577, 578; (147) 579, 580, 581, 582, 583, (148) 584, 585, 586, 587, 588, 589; (149) 590, 591, 592, 593, 594, 595; (150) 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606; (151) 607, 608, 609, 610, 611; (152) 612, 613, 614, 615, 616; (153) 617, 618, 619; (154) 620, 621, 622, 623, 624; (155) 625, 626, 627, 628; (156) 629, 630, 631, 632, 633; (157) 634, 635, 636, 637, 638; (158) 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650.

Octavo pages 651 to 678 contain additional cases without corresponding numbers in quarto.

## VOLUME III.

(1) 1, 2, 3, 4; (2) 5, 6, 7, 8, 9; (3) 10, 11, 12, 13, 14, 15, 16; (4) 17, 18, 19, 20; (5) 21, 22, 23, 24, 25, 26, 27; (6) 28, 29, 30, 31, 32; (7) 33, 34, 35, 36, 37, 38, (8) 39, 40, 41, (10) 42, 43, 44, 45, (11) 46, 47, (12) 48, 49, 50, 51, 52; (13) 53, 54, 55, 56, 57, 58; (14) 59, 60, 61, 62, 63; (15) 64, 65, 66, 67, 68, 69; (16) 70, 71, 72; (17) 73, 74, 75, 76, 77; (18) 78, 79, 80, 81, 82; (19) 83, (20) 84, (21) 85, 86, 87, 88, 89, 90; (22) 91, 92, 93, 94,

95; (25) 96, 97, 98, 99; (26) 100, 101, 102, 103; (27) 104, 105, 106; (28) 107, 108, 109, 110, 111, 112; (29) 113, 114, 115, 116, 117; (30) 118, 119, 120, 121, 122, 123; (31) 124, 125, 126, 127; (32) 128, 129, 130; (33) 131, 132, 133, 134, 135, 136; (34) 137, 138, 139, 140; (35) 141, 142, 143, 144, 145, 146, 147; (36) 148, 149, 150, 151, 152; (37) 153, 154, 155, 156, 157, 158; (38) 159, 160, 161, 162, 163; (39) 164, 165, 166, 167; (40) 168, 169, 170, 171, 172; (41) 173, 174, 175, 176; (42) 177, 178, 179, 180, 181; (43) 182, 183, 184, 185, 186; (44) 187, 188, 189, 190, 191, 192; (45) 193, 194, 195, 196; (46) 197, 198, 199, 200, 201; (47) 202, 203, 204, 205, 206; (48) 207, 208, 209, 210, 211, 212; (49) 213, 214, 215, 216, 217; (50) 218, 219, 220, 221, 222, 223; (51) 224, 225, 226, 227, 228, 229; (52) 230, 231, 232, 233, 234, 235; (53) 236, 237, 238, 239; (54) 240, 241, 242, 243; (55) 244, 245, 246, 247, 248; (56) 249, 250, 251, 252, 253; (57) 254, 255, 256, 257, 258; (58) 259, 260, 261, 262, 263; (59) 264, 265, 266, 267; (60) 268, 269, 270, 271; (61) 272, 273, 274, 275, 276, 277; (62) 278, 279, 280, 281; (63) 282, 283, 284, 285, 286; (64) 287, 288, 289, 290, 291; (65) 292, 293, 294, 295, 296; (66) 297, 298, 299, 300, 301; (67) 302, 303; (68) 304, 305, 306; (69) 307, 308, 309, 310, 311; (70) 312, 313, 314, 315, 316; (71) 317, 318, 319, 320, 321; (72) 322, 323, 324, 325, 326; (73) 327, 328, 329, 330, 331, 332; (74) 333, 334, 335, 336, 337, 338; (75) 339, 340, 341; (76) 342, 343, 344, 345, 346; (77) 347, 348, 349, 350, 351; (78) 352, 353, 354, 355, 356; (79) 357, 358, 359, 360, 361; (80) 362, 363, 364, 365, 366, 367; (81) 368, 369, 370, 371, 372, 373; (82) 374, 375, 376; (83) 377, 378, 379, 380, 381, 382; (84) 383, 384, 385, 386, 387; (85) 388, 389, 390, 391, 392; (86) 393, 394, 395, 396, 397, 398; (87) 399, 400, 401, 402, 403; (88) 404, 405, 406, 407, 408, 409; (89) 410, 411, 412, 413; (90) 414, 415, 416, 417; (91) 418, 419, 420, 421, 422; (92) 423, 424, 425, 426, 427; (93) 428, 429, 430, 431, 432; (94) 433, 434, 435; (95) 436, 437, 438, 439, 440; (96) 441, 442; (97) 443, 444, 445, 446; (98) 447, 448, 449, 450, 451, 452; (99) 453, 454, 455, 456, 457; (100) 458, 459, 460, 461, 462; (101) 463, 464, 465, 466, 467, 468; (102) 469, 470, 471, 472, 473, 474; (103) 475, 476, 477, 478, 479, 480; (104) 481, 482, 483, 484; (105) 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495; (106) 496, 497, 498, 499, 500; (107) 501, 502, 503, 504, 505; (108) 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517; (109) 518, 519; (110) 520, 521, 522, 523, 524; (111) 525, 526, 527, 528, 529; (112) 530, 531, 532, 533; (113) 534, 535, 536, 537, 538; (114) 539, 540, 541, 542, 543; (115) 544, 545, 546, 547, 548, 549, 550; (116) 551, 552, 553, 554; (117) 555, 556, 557, 558; (118) 559, 560, 561, 562, 563; (119) 564, 565, 566, 567, 568, 569; (120) 570, 571, 572, 573, 574; (121) 575, 576, 577, 578, 579, 580; (122) 581, 582, 583, 584, 585; (123) 586, 587, 588, 589, 590; (124) 591, 592, 593, 594, 595, 596; (125) 597, 598, 599, 600, 601; (126) 602, 603, 604, 605, 606; (127) 607, 608, 609, 610, 611, 612; (128) 613, 614, 615, 616, 617; (129) 618, 619, 620, 621; (130) 622, 623, 624, 625; (131) 626, 627, 628, 629, 630; (132) 631, 632, 633, 634, 635; (133) 636, 637, 638, 639; (134) 640, 641, 642, 643, 644, 645; (135) 646, 647; (136) 648; (137) 649, 650, 651, 652; (138) 653, 654, 655, 656, 657; (139) 658, 659, 660, 661, 662; (140) 663, 664, 665, 666, 667, 668; (141) 669, 670, 671, 672, 673; (142) 674, 675, 676, 677, 678, 679; (143) 680, 681, 682, 683, 684, 685; (144) 686, 687, 688; (145) 689, 690, 691, 692, 693; (146) 694, 695, 696, 697, 698; (147) 699, 700, 701, 702, 703, 704; (148) 705, 706, 707, 708, 709; (149) 710, 711, 712, 713, 714; (150) 715, 716; (151) 717, 718, 719, 720; (152) 721, 722, 723, 724, 725; (153) 726, 727, 728, 729, 730, 731; (154) 732, 733, 734, 735, 736; (155) 737, 738, 739, 740, 741, 742; (156) 743, 744, 745, 746, 747; (157) 748, 749, 750, 751, 752, 753; (158) 754, 755, 756; (159) 757, 758, 759, 760, 761; (160) 762, 763, 764, 765; (161) 766, 767, 768, 769, 770; (162) 771, 772, 773, 774, 775, 776; (163) 777, 778, 779, 780, 781; (164) 782, 783, 784, 785, 786, 787, 788.

## VOLUME IV.

(1) 1, 2; (2) 3, 4, 5, 6, 7, 8; (3) 9, 10, 11, 12, 13; (4) 14, 15, 16, 17, 18; (5) 19, 20, 21, 22, 23; (6) 24, 25, 26, 27, 28; (7) 29, 30, 31, 32, 33, 34; (8) 35, 36, 37, 38; (9) 39, 40, 41, 42, 43; (10) 44, 45, 46, 47, 48; (11) 49, 50, 51, 52, 53, 54; (12) 55, 56, 57, 58, 59; (13) 60, 61, 62, 63; (14) 64, 65, 66, 67; (15) 68, 69, 70, 71; (16) 72, 73, 74, 75, 76; (17) 77, 78, 79, 80; (18) 81, 82, 83, 84, 85; (19) 86, 87, 88, 89, 90; (20) 91, 92; (21) 93, 94, 95; (22) 96, 97, 98, 99, 100; (23) 101, 102, 103, 104, 105; (24) 106, 107, 108, 109, 110; (25) 111, 112, 113, 114, 115; (26) 116, 117, 118, 119, 120; (27) 121, 122, 123, 124, 125, 126; (28) 127, 128; (29) 129, 130, 131, 132, 133; (30) 134, 135, 136, 137, 138, 139; (31) 140, 141, 142, 143, 144; (32) 145, 146, 147, 148, 149, 150; (33) 151, 152, 153, 154, 155; (34) 156, 157, 158, 159; (35) 160, 161; (36) 162, 163, 164, 165, 166; (37) 167, 168, 169, 170, 171; (38) 172, 173, 174, 175; (39) 176, 177, 178, 179, 180; (40) 181, 182, 183, 184, 185, 186; (41) 187, 188, 189; (42) 190, 191, 192, 193; (43) 194, 195, 196; (44) 197, 198, 199, 200; (45) 201, 202, 203, 204, 205; (46) 206, 207, 208, 209, 210; (47) 211, 212; (48) 213, 214, 215, 216; (49) 217, 218, 219, 220, 221; (50) 222, 223, 224, 225, 226, 227; (51) 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

228, 229, 230, 231, 232; (70) 233, 234, 235, 236, 237, 238; (71) 239, 240, 241, 242; (74) 243, 244, 245, 246; (75) 247, 248, 249, 250, 251; (76) 252, 253, 254, 255, 256; (77) 257, 258, 259, 260, 261; (78) 262, 263, 264, 265, 266, 267; (79) 268, 269, 270; (82) 271, 272, 273; (83) 274, 275, 276, 277, 278; (84) 279, 280, 281, 282, 283; (85) 284, 285, 286, 287, 288, 289; (86) 290, 291, 292, 293, 294; (90) 295, 296, 297; (91) 298, 299, 300, 301, 302; (92) 303, 304, 305, 306; (93) 307, 308; (98) 309; (99) 310, 311, 312, 313, 314; (100) 315, 316, 317, 318, 319, 320; (101) 321, 322; (106) 323, 324; (107) 325, 326, 327, 328, 329; (108) 330, 331, 332, 333, 334; (109) 335, 336, 337, 338, 339, 340; (110) 341, 342, 343, 344, 345; (111) 346; (114) 347, 348, 349, 350, 351, 352; (115) 353, 354, 355, 356, 357, 358; (116) 359, 360, 361, 362, 363; (117) 364, 365, 366; (122) 367, 368, 369; (123) 370, 371, 372, 373; (124) 374, 375, 376, 377, 378; (125) 379, 380, 381, 382, 383; (126) 384, 385, 386, 387, 388, 389; (127) 390; (130) 391, 392, 393, 394, 395; (132) 396; (133) 397; (134) 398, 399, 400, 401, 402; (135) 403, 404, 405; (138) 406, 407, 408, 409, 410; (139) 411, 412, 413, 414, 415; (140) 416, 417, 418, 419, 420; (141) 421, 422, 423, 424, 425, 426; (142) 427, 428, 429, 430, 431; (143) 432, 433, 434, 435; (145) 436; (146) 437, 438, 439, 440, 441; (147) 442, 443, 444, 445; (148) 446, 447, 448, 449, 450; (149) 451, 452, 453, 454; (150) 455, 456, 457, 458, 459; (151) 460, 461, 462, 463, 464, 465; (154) 466, 467, 468, 469; (155) 470, 471, 472, 473, 474; (156) 475, 476, 477, 478, 479; (157) 480, 481, 482, 483, 484; (158) 485, 486, 487, 488, 489, 490; (159) 491, 492, 493, 494, 495; (161) 496, 497; (162) 498, 499, 500; (163) 501, 502, 503, 504; (164) 505, 506, 507, 508, 509; (165) 510, 511, 512, 513, 514; (166) 515, 516, 517, 518, 519, 520; (167) 521; (173) 522, 523, 524, 525; (174) 526, 527, 528, 529, 530; (175) 531, 532, 533, 534; (176) 535, 536, 537, 538, 539, 540; (178) 541, 542, 543, 544, 545; (179) 546, 547, 548, 549; (180) 550, 551, 552, 553, 554; (181) 555, 556, 557, 558, 559; (182) 560, 561, 562, 563, 564, 565, 566, 567; (183) 568; (185) 569, 570, 571; (186) 572, 573, 574, 575, 576; (187) 577, 578, 579, 580; (188) 581, 582, 583, 584, 585; (189) 586, 587, 588, 589; (190) 590, 591, 592, 593, 594; (191) 595, 596, 597, 598; (195) 599, 600, 601, 602, 603; (196) 604, 605, 606, 607, 608; (197) 609, 610, 611, 612; (198) 613, 614, 615, 616, 617; (199) 618, 619, 620, 621, 622.

Octavo pages 623 to 732, contain additional cases without corresponding numbers in the quarto.

# TABLE OF CASES.

IN this Table the cases are alphabetically arranged according to their names; following the case, on the same line, is the number of the volume and page of the Report where it is reported. The words and figures on the lines below refer to the subject and page of *this* work for the points decided in the case or the criticism upon it.

A. B.....3-244 Register, p. 598.	ALABAMA & CHATTANOOGA R. R. COM- PANY.....6-107 Carrying on Business, p. 274; Corpo- ration, p. 309; Jurisdiction, p. 470; Rail- road Corporation, p. 589.
ABBE, WARREN C.....2-75 Discharge, p. 362; Parties, 519.	ALABAMA & CHATTANOOGA R. R. Co. v. JONES.....5-97 Absence, p. 172; Adjudication, p. 187; Appearance, p. 212; Attorney and Counsel, p. 260; <i>Idem</i> , p. 261; Construc- tion, p. 299; Courts, p. 324; Pleading, p. 543; Proceedings in Bankruptcy, p. 568; Railroad Corporation, p. 589; Ser- vice of Papers, p. 628.
ABLE <i>et al.</i> , PAYNE <i>et al.</i> v.....4-220 Concealment, p. 29; Discharge, p. 363; Pleading, p. 539; Schedules, p. 619.	ALABAMA & CHATTANOOGA R. R. Co. v. JONES.....7-145 Amendment, p. 206; Courts, p. 323; <i>Idem</i> , p. 324; Jurisdiction, p. 464; Record, p. 595.
ADAMS, R. A.....3-561 Crit., p. 30; Discharge, p. 354; Fraud, p. 430.	ALBIN, HAUGHEY, ETC., v.....2-399 Preference, p. 561.
ADAMS, JULIUS L.....2-95 Affidavit, p. 195; Examination, p. 389; Practice, p. 548.	ALDEN v. BOSTON, HARTFORD & ERIE R. R. Co.....5-230 Courts, p. 333; Railroad Corporation, p. 589; Receiver, p. 593.
ADAMS, JULIUS L.....2-272 Crit., p. 30; Bankrupt, p. 266; Cred- itors, p. 335; Examination, p. 390; Reg- ister, p. 603.	ALEHOUSE, READE v.....10-277 Assignee, p. 248; Trustee, p. 666.
ADAMS v. BOSTON, HARTFORD & ERIE R. R. Co.....4-314 Crit., p. 30; Railroad Corporation, p. 588; Sales, 613.	ALEXANDER.....3-29 Appeal, p. 208; <i>Idem</i> , p. 209; <i>Idem</i> , p. 210; Jurisdiction, p. 464; Review, p. 609; Time, p. 656.
ADAMS, HOLYOKE v.....10-270 Attachment, p. 257; Surety, p. 649.	ALEXANDER, W. B. & J. F.....4-178 Debt, p. 342; Secured Creditor, p. 621.
ADAMS v. MEYERS.....8-214 Assignee, p. 239; Distribution, p. 372; Proof of Debt, p. 575; Provable Debt, p. 582.	ALLAIRE WORKS, HUBBARD <i>et al.</i> v.....4-623 Assignee, p. 235.
ADLER & BODENHEIM.....2-419 Application for Discharge, p. 215; Discharge, p. 351; Time, p. 656.	
AHL & BUCHANAN, ETC., v. THORNER.3-118 Endorser, p. 378; Fraud, p. 425; Preference, p. 556.	
AIRD, LUKIM v.....2-81 Fraud, p. 428; Sales, p. 281.	

- ALLEN, ASSIGNEE, ETC., v. MASSEY**..4-248  
 Fraud, p. 419.
- ALLEN, HALL v.**.....9-6  
 Appeal, p. 211; Courts, p. 328; Summary Proceedings, p. 648.
- ALLEN, MASSEY et al. v.**.....7-401  
 Assignee, p. 235; Construction, p. 299; Fraud, p. 428; Transfer, p. 662.
- ALLEN & Co. v. MONTGOMERY et al.**..10-504  
 Advances, p. 193; Assignee, p. 236; Courts, p. 326; *Idem*, 333; Creditors, p. 336; Fraud, p. 419; Lien, p. 479; Sales, 617; Stay of Proceedings, 641; Suits, 647.
- ALLEN, SARAH O., v. THE SOLDIER'S BUSINESS MESSENGER AND DISPATCH COMPANY**.....4-587  
 Crit., p. 30; Corporation, p. 308; Stay of Proceedings, p. 638.
- ALLEN & Co. v. FERGUSON**.....9-481  
 Payment, 511.
- ALLEN v. WARD**.....10-285  
 Corporation, p. 309; Injunction, p. 442; Judgment, p. 457; Stockholder, p. 643.
- ALSTON v. ROBBINETT**.....9-74  
 Courts, p. 330; Discharge, p. 359.
- ALTENHAIN**.....1-85  
 Appearance, p. 212; Protest, p. 580.
- AMERICAN WATERPROOF CLOTH Co.**..3-285  
 Practice, p. 553.
- AMES, Ex parte; McKay & Aldus, In re.**.....7-230  
 Advances, p. 194; Fixtures, p. 410; Indemnity, p. 439; Mortgage, p. 501; *Idem*, 502; *Idem*, 503; Preference, p. 560; Preferred Creditor, p. 564; Secured Creditor, p. 620.
- AMES et al., FOSTER, DWIGHT et al. v.**..2-455  
 Assignee, p. 244; *Idem*, p. 245; Chattel Mortgage, p. 279; Courts, p. 325; Encumbered Property, p. 377; Equity, p. 382; Finishing Chattels, p. 410; Mortgage, p. 507; Sales, p. 612.
- AMSINK, BEAN v.**.....8-228  
 Assignee, p. 234; Composition, p. 290; Fraud, p. 417.
- ANDERSON, DAVID**.....2-538  
 Cost and Fees, p. 317.
- ANDERSON, GEO. W.**.....9-360  
 Agreement, p. 198; Assignee, p. 237; Bankrupt, p. 265.
- ANDERSON et al. DAVID v.**.....6-146  
 Assignee, p. 242; Assignment, p. 253; Custody of Property, p. 338; Execution, p. 399; Fraud, p. 423; Life Insurance, p. 488; Sales, p. 614; Secured Creditors, p. 626; Time, p. 657; Title, p. 659; Two Years, p. 666.
- ANDREW v. GRAVES**.....4-652  
 Judgment, p. 458.
- ANGELL, FREDERICK E.**.....10-78  
 Amendment, p. 200.
- ANGIER**.....4-619  
 Dower, p. 376.
- ANONYMOUS**.....1-24  
 Clerk, p. 281; Cost and Fees, p. 317; *Idem*, p. 318.
- ANONYMOUS**.....1-122  
 Advances, p. 194; Assignee, p. 223; Cost and Fees, p. 313; Creditors, p. 336; Discharge, p. 360; Notice, p. 512; Publication, p. 586; Schedules, p. 617; *Idem*, p. 618.
- ANONYMOUS**.....1-215  
 Illegibility, p. 439; Judge, p. 455; Name, p. 510; Petition, p. 535.
- ANONYMOUS**.....1-219  
 Discharge, p. 360; Proof of Debt, p. 575.
- ANONYMOUS**.....2-68  
 Assignee, p. 246; Discharge, p. 351; Meetings of Creditors, p. 495; Proof of Debt, p. 575.
- ANONYMOUS**.....2-141  
 Newspapers, p. 511; Schedules, p. 618.
- ANSHUTZ v. CAMPBELL**.....8-527  
 Assignee, p. 230; Execution, p. 397; Injunction, p. 441.
- ANSONIA BRASS AND COPPER Co. v. NEW LAMP CHIMNEY**.....10-355  
 Corporation, p. 309; Creditors, p. 334; Debt, p. 340; Judgment, p. 462.
- ANTRIMS v. KELLY et al.**.....4-587  
 Fraud, p. 430.
- APPLETON v. BOWLES et al.**.....9-354  
 Crit., p. 30; Assignee, p. 237; Courts, p. 332; Priority, p. 565.
- APPLETON v. STEVERS**.....10-515  
 Four and Six Months, p. 413; Receiver, p. 594.
- APPOLD**.....1-621  
 Rent, p. 604; Uniformity of Act, p. 667.
- ARCHENBROWN, In re**.....8-429  
 Cost and Fees, p. 317.
- ARCHER, PLATT v.**.....6-465  
 Assignee, p. 248; Cashier, p. 274; Corporation, p. 308; *Idem*, p. 310; In-

- junction, p. 445; Jurisdiction, p. 465; Order, p. 515; *Idem*, p. 516.
- ARLEDGE.....1-644  
Assignee, p. 249; *Idem*, p. 251.
- ARMSTRONG, DAVIS & GREEN *v.*.....3-34  
Fraud, p. 430; Ordinary Course of Business, p. 516.
- ARMSTRONG *v.* RICKEY BROTHERS...2-473  
Fraud, p. 422; Judgment, p. 457; Levy, p. 477; Preference, p. 556.
- ARNOLD, NOAH S.....2-160
- ARNOLD, SWOPE *et al.* *v.*.....5-148  
Execution, p. 396; Judgment, p. 459.
- ASKEW.....3-575  
Homestead, p. 435.
- ASPINWALL.....10-448  
Attorney and Counsel, p. 262; Privilege of Counsel, p. 567.
- ATKINSON.....7-143  
Attachment, p. 256, Creditors, p. 334; Execution, p. 398.
- ATKINSON *v.* KELLOGG.....10-535  
Assignee, p. 242; Counterclaim, p. 320; Dividend, p. 376.
- ATTORNEY-GENERAL, OPINION.....9-117  
Payment, p. 513.
- AURORA INS. CO., MEYER *v.*.....7-191  
Corporation, p. 308; Discharge, p. 354.
- AUSTIN & HALLIDAY, WOODDAIL *v.* 10-545  
Bankruptcy of Plaintiff, p. 269; Non-suit, p. 511.
- AUSTIN, J. M. *v.* W. MARKHAM....10-548  
Assent, p. 218; Discharge, p. 366; Discontinuance of Proceedings, p. 370; Illegal Promise, p. 439; Non-suit, p. 511; Pleading, p. 540.
- AUSTIN *v.* O'REILLY.....8-129  
Distribution, p. 375; Lien, p. 425; Priority, p. 566; Rent, p. 606.
- AVERY *v.* JOHANN.... 8-144  
Crit., p. 30; Secured Creditor, p. 622; *Idem*, p. 623.
- BABBITT, ASSIGNEE, *v.* BURGESS....7-561  
Assignee, p. 230; *Idem*, p. 231; Commencement of Proceedings, p. 283; Demurrer, p. 344; Evidence, p. 385; Notice, p. 513; Payment, p. 530; Pleading, p. 542.
- BABBITT *v.* WALBRUN & Co.....4-121  
Evidence, p. 384; Fraud, p. 424; Notice, p. 513; Ordinary Course of Business, p. 516; Sales, p. 613.
- BABBITT *v.* WALBRUN & Co.....6-359  
Crit., p. 30; Assignee, p. 233.
- BABBITT, WALBRUN *et al.* *v.*.....9-1  
Burden of Proof, p. 272; Fraud, p. 424; Notice, p. 513; Purchaser, p. 588.
- BACHMAN *v.* PACKARD.....7-353  
Crit., p. 30; Assignee, p. 237; Courts, p. 323; *Idem*, p. 327; Jurisdiction, p. 464.
- BAILEY.....1-618  
Carrying on Business, p. 274.
- BAILEY *v.* NICHOLS *et al.*.....2-478  
Advances, p. 193.
- BAKEWELL.....4-619  
Proof of Debt, p. 574.
- BALDWIN *v.* RAPPLEE.....5-19  
Appeal, p. 209.
- BALDWIN *et al.* *v.* WILDER *et al.*.....6-85  
Crit., p. 30; Amendment, p. 199; Fourteen Days, p. 415; Suspension of Payment, p. 654.
- BALDY, PIPER *v.*.....10-517  
Judgment, p. 457; *Idem*, p. 460.
- BALLARD & HALL, GEOW *v.*.....2-194  
Assignee, p. 235; Exemption, p. 401.
- BALLARD & PARSONS.....2-250  
Burden of Proof, p. 273; Suspension of Payment, p. 653.
- BALLOU.....3-717
- BANCROFT *et al.*, HYDE *v.*.....8-24  
Injunction, p. 444.
- BANK OF LEAVENWORTH *v.* HUNT...4-616  
See SECOND BANK OF LEAVENWORTH *v.* HUNT, post.
- BANK OF LOUISIANA, THORNHILL *et al.* AND WILLIAMS *v.*.....3-435  
Crit., p. 36; Corporation, p. 306; *Idem*, p. 309; Courts, p. 330; Jurisdiction, p. 464.
- BANK OF LOUISIANA, THORNHILL *et al.* AND WILLIAMS *v.*.....5-367, 377  
See THORNHILL *v.* BANK OF LOUISIANA, post.
- BANK OF MADISON.....9-184  
Bankrupt Act, p. 268; Debt, p. 339; Mutual Debts, p. 510.
- BANK OF NORTH CAROLINA.....10-289  
Bankrupt Act, p. 268; Interest, p. 453.
- BANK OF NORTH CAROLINA, WILSON & SHOBER *v.*.....10-290  
Creditors, p. 334.
- BANK OF TROY, COOPER *v.*.....9-529  
Pleading, p. 540.
- BARDWELL, DAY *v.*.....8-455  
Insolvent Laws, p. 449.



- BARNES v. MOORE**.....2-573  
Concealment, p. 292; Discharge, p. 359.
- BARNES, SYMONDS v.**.....6-377  
Schedule, p. 619.
- BARNETT et al. v. HIGHTOWER & BUTLER**.....10-157  
Amendment, p. 201; *Idem*, p. 202.
- BARR et al., VAN NOSTRAND v.**.....2-485  
Jurisdiction, p. 467.
- BARRETT**.....2-533  
Assignee, p. 223; *Idem*, p. 225; Attorney and Counsel, p. 263; Partnership, p. 526; Power of Attorney, p. 546
- BARROW**... ..1-481  
Encumbered Property, p. 377; Jurisdiction, 467; Sales, p. 611.
- BARRY, GUNN v.**.....8-1  
Crit., p. 33; Homestead, p. 434; Mandamus, p. 491; Remedy, p. 604.
- BARSTOW v. PECKHAM et al.**.....5-72  
Crit., p. 30; Fraud, p. 422; Jurisdiction, p. 473; Mortgage, p. 506.
- BARTHOLOW v. BEAN**.....10-241  
Commercial Paper, p. 286; Payment, p. 530; Preference, p. 558.
- BARTHOLOMEW v. WEST et al.**.....8-12  
Assignee, p. 246; Delay, p. 344; Homestead, p. 434.
- BASHFORD, HENRY W.**.....2-73  
Discharge, p. 358; Fraud, p. 420; Opposing Discharge, p. 514.
- BARTUSCH**.....9-478  
Practice, p. 551; Proof of Debt, p. 576; Register, p. 602.
- BATCHELDER**.....8-150  
Fraud, p. 422; Preference, p. 563.
- BATCHELDER v. LOW**.....8-571  
Courts, p. 330; Discharge, p. 358; Notice, p. 513; Pleading, p. 539.
- BATES v. TAPPAN**.....8-647  
Four and Six Months, p. 413; Judgment, p. 456.
- BAUM**.....1-5  
Discharge, p. 360; Meeting of Creditors, p. 495; Practice, p. 550.
- BEAL, JOSEPH H.**.....2-587  
Books of Account, p. 272; Concealment, p. 292; Schedules, p. 619.
- BEALL v. HARRELL**.....7-400  
Crit., p. 30; Assignee, p. 230; Purchaser, p. 588; Sheriff, p. 633.
- BEALL, HARRELL v.**.....9-49  
See HARRELL v. BEALL, post.
- BEAN v. AMSINK**.....8-228  
Assignee, p. 234; Composition, p. 290; Fraud, p. 417.
- BEAN, ASSIGNEE, v. BROOKMIER & RANKIN**.....4-196  
Crit., p. 30; Four and Six Months, p. 413; Fraud, p. 425; Limitation, p. 488.
- BEAN, ASSIGNEE, v. BROOKMIER & RANKIN**.....7-568  
Composition, p. 289; Equity, p. 381; Fraud, p. 418.
- BEAN v. LAFLIN**.....5-333  
Commercial Paper, p. 286; Endorser, p. 378; Liability, p. 478.
- BEARDSLEY**.....1-304  
Discharge, p. 362; Pleading, p. 543.
- BEARDSLEY**.....1-457  
Assets, p. 219; Discharge, p. 352; *Idem*, p. 384.
- BEATTIE, ASSIGNEE, v. GARDNER**...4-323  
Judgment, p. 461; Procuring and Suffering to be Taken, p. 570; Suffering Property to be Taken, p. 646.
- BEATTY**.....2-582
- BECK**.....1-588  
Execution, p. 396; Summary Proceedings, p. 647.
- BECKER, DINGEE v.**.....9-508  
Discharge, p. 364; Remedy, p. 604.
- BECKERKORD**.....4-204  
Homestead, p. 434; Uniformity of Act, p. 667.
- BECKWITH et al., BILL v.**.....2-241  
Crit., p. 30; Equity, p. 380; Summary Proceedings, p. 647.
- BECKWITH, VAUPEL & MOORE, NEAL, ETC., v. (Case above)**.....2-241
- BEECHER v. Clark et al.**.....10-385  
Concealment, p. 292; Fraud, p. 420.
- BEECHER v. BININGER et al.**.....3-489  
Review, p. 609.
- BEERS et al.**.....5-211  
Proof of Debt, p. 573.
- BEERS et al., ASSIGNEE, v. PLACE et al.**.....4-459
- BELCHER**.....1-666  
Carrying on Business, p. 274; Jurisdiction, p. 471; Residence, p. 608.
- BELDEN, FRANCIS C.**.....2-42  
Intent, p. 450; Procuring and Suffering to be Taken, p. 570
- BELDEN, W.**.....6-443  
Delay, p. 344; Discharge, p. 351; Stay of Proceedings, p. 633.

- BELDEN & HOOKER**.....4-194  
Examination, p. 390; Expunging Proof, p. 404.
- BELLAMY**.....1-64  
Account, p. 172; Assets, p. 220; Assignee, p. 242; *Idem*, 246; Clerk, p. 281; Discharge, p. 351; Evidence, p. 388; Examination, p. 388; Legal Process, p. 477; Notice, p. 513; Order, p. 515; Publication, p. 586; Register, p. 601; Wife of Bankrupt, p. 676.
- BELLAMY**.....1-96  
Adjudication, p. 190; Clerk, p. 281; Cost and Fees, p. 318; *Idem*, 320; Discharge, p. 362; *Idem*, 365; Meetings of Creditors, p. 496; Notice, p. 512; Register, p. 599; *Idem*, 602; Regularity of Proceedings, p. 608.
- BELLAMY**.....1-118  
Clerk, p. 281; Proof of Debt, p. 577; Reference, p. 595; Register, p. 599.
- BELLIS & MILLIGAN**.....3-199  
Privilege of Counsel, p. 567; Witness, p. 680.
- BELLIS & MILLIGAN**.....3-271  
Wife of Bankrupt, p. 677.
- BELLIS & MILLIGAN**.....3-496  
Books of Account, p. 271.
- BENHAM**.....8-94  
Demurrer, p. 344; Denial of Bankruptcy, p. 345.
- BENJAMIN v. GRAHAM**.....4-391  
Practice, p. 552.
- BENJAMIN, ASSIGNEE, v. HART**.....4-408  
Appeal, p. 208; Bond, p. 270; Execution, p. 398.
- BENNETT**.....2-181  
Exemption, p. 401.
- BERNSTEIN**.....1-199  
Attachment, p. 258; Lien, p. 482; Sheriff, p. 632.
- BERRY, MARTIN v.**.....2-629  
Bankrupt Act, p. 266; Insolvent Laws, p. 448; State Insolvent Laws, p. 636.
- BIDDLE'S APPEAL**.....9-144  
Surplus, p. 650.
- BICKFORD, SMITH &**.....5-20  
Discharge, p. 351; Pleading, p. 543; Specification, p. 635.
- BIDWELL**.....2-229  
Amendment, p. 203; Discharge, p. 362; Practice, p. 548.
- BIELER**.....7-552  
Discontinuance of Proceedings, p. 368; Jurisdiction, p. 465; Setting Aside Conveyance, p. 631.
- BIGELOW et al.**.....1-632  
Crit., p. 30; Proof of Debt, p. 577; Sales, p. 611; Secured Creditor, p. 625.
- BIGELOW et al.**.....1-667  
Bank, p. 264; Lien, p. 480; National Bank, p. 510; Stockholder, p. 642.
- BIGELOW et al.**.....2-371  
Distribution, p. 873; Joint Liability, p. 455; Partnership, p. 522.
- BIGELOW et al.**.....2-556  
Money, p. 498; Wife of Bankrupt, p. 677.
- BIGLER v. WALLER**.....4-292  
Time, p. 657; War, p. 675.
- BILL v. BECKWITH et al.**.....2-241  
Crit., p. 30; Equity, p. 380; Summary Proceedings, p. 647.
- BILLING**.....2-513  
Bankrupt Act, p. 267; Discharge, p. 356; Fifty Per Cent., p. 408.
- BILLINGS, RUDDICK v.**.....3-61  
See RUDDICK v. BILLINGS, post.
- BINGHAM v. CLAFLIN et al.**.....7-412  
Crit., p. 31; Assignee, p. 238; Courts, p. 328.
- BINGHAM v. Frost**.....6-130  
Conveyance, p. 304; Mortgage, p. 501.
- BINGHAM et al., HUDSON et al. v.**.....8-494  
Discharge, p. 363; Equity, p. 381; Evidence, p. 386.
- BINGHAM v. RICHMOND & GIBBS**.....6-127  
Chattel Mortgage, p. 278; Mortgage, p. 500.
- BINGHAM v. WILLIAMS**.....6-130  
Conveyance, p. 304; Mortgage, p. 501.
- BINGHAM et al., Sherman et al., v.**.....5-34  
Different Districts, p. 348.
- BINGHAM et al., SHERMAN et al., v.**.....7-490  
Assignee, p. 236; *Idem*, 237; Courts, p. 324; Jurisdiction, p. 466.
- BININGER & CLARK**.....9-568  
Assignee, p. 228; Bond, p. 270.
- BININGER et al.**.....3-481  
Courts, p. 325.
- BININGER, CLARK v.**.....3-518  
Courts, p. 331; Jurisdiction, p. 463.
- BININGER, CLARK v.**.....3-524  
Jurisdiction, p. 469.
- BININGER & Co., HARDY, BLAKE & Co., v.**.....4-263  
Acts of Bankruptcy, p. 180; Fraud, p.

- 429 ; Legal Process, p. 477 ; Suffering Property to be Taken, p. 646.
- BISHOP, JOHNSON *v.*.....8-533  
Assignee, p. 236 ; Attachment, p. 259.
- BLACK & SECOR.....1-353  
Acts of Bankruptcy, p. 179 ; Fraud, p. 422 ; Insolvency, p. 446 ; Practice, p. 552 ; Procuring and Suffering to be Taken, p. 570 ; Suffering Property to be Taken, p. 645.
- BLACK & SECOR.....2-171  
Crit., p. 31 ; Cost and Fees, p. 319 ; Execution, p. 398 ; Judgment, p. 459 ; Lien, p. 482 ; Secured Creditor, p. 626 ; Sheriff, p. 633.
- BLAISDELL *et al.*.....6-78  
Assignee, p. 247 ; Discharge, p. 353 ; Practice, p. 547.
- BLAKE.....2-10  
Examination, p. 388 ; *Idem*, p. 392 ; Witness, p. 680.
- BLAKE *v.* THE ALABAMA AND CHATTANOOGA R. R. Co. *et al.*.....6-331  
Jurisdiction, p. 470.
- BLAKE *et al.*, SAMSON *v.*.....6-401  
Appeal, p. 211 ; Review, p. 610 ; Summary Proceedings, p. 648.
- BLAKE *et al.*, SAMSON *v.*.....6-410  
Amendment, p. 205 ; Appeal, p. 208 ; Jurisdiction p. 472 ; Review, p. 610 ; Summary Proceedings, p. 648.
- BLANDIN.....5-39  
Provable Debt, p. 586.
- BLISS.....1-78  
Assignee, p. 227 ; Register, p. 596.
- BLODGET & SANFORD.....5-472  
Assignee, p. 229 ; *Idem*, p. 250.
- BLODGET & SANFORD.....10-145  
Adjudication, p. 191 ; Exemption, p. 403 ; Partnership, p. 522.
- BLOSS.....4-147  
Judgment, p. 462 ; Lien, p. 487 ; Provable Debt, p. 584 ; Secured Creditor, p. 627 ; Waiver, p. 673.
- BLUMENTHAL, ISIDOR &.....1-264  
Examination, p. 389 ; Laches, p. 476.
- BOATMENS' SAVINGS INSTITUTION, DARBY'S TRUSTEES, *v.*.....4-600  
Crit., p. 32 ; Advances, p. 193 ; Equity, p. 380 ; Interest, p. 452 ; Laws, p. 490.
- BOATMENS' SAVINGS INSTITUTION, TIFFANY, *v.*.....9-245  
Commercial Paper, p. 285 ; Contract, p. 304 ; Corporation, p. 312 ; Evidence, p. 386 ; Loans, p. 491 ; Preference, p. 558 ; Secured Creditor, p. 622 ; Usury, p. 668.
- BODENHEIM & ADLER.....2-419  
Application for Discharge, p. 218 ; Discharge, p. 351 ; Time, p. 656.
- BOGERT & EVANS.....2-435  
Register, p. 602.
- BOGERT & EVANS.....2-505  
Practice, p. 553 ; Surrender, p. 650.
- BOGERT & OAKLEY.....3-651  
Assignee, p. 223.
- BOLANDER *v.* GENTRY.....2-655  
Assignee, p. 229 ; Attachment, p. 259 ; Claim and Delivery, p. 281 ; Pleading, p. 538 ; Sales, p. 612 ; Title, p. 658.
- BOLTON.....1-370  
Assignee, p. 225 ; Proof of Debt, p. 577 ; Secured Creditor, p. 627 ; Vote, p. 671.
- BOND, ADDISON F.....8-7  
Examination, p. 388.
- BONESTEEL.....2-330  
Examination, p. 392.
- BONESTEEL.....3-517  
Summary Proceedings, p. 648.
- BOOKMIER & RANKIN, BRAN, ETC., *v.*.....7-568  
Composition, p. 289 ; Equity, p. 381 ; Fraud, p. 418.
- BOOTH *v.* LENKE.....5-351  
Commission Merchant, p. 287 ; Fiduciary Debt, p. 406.
- BORDEN & GEARY.....5-128  
Fifty per Cent., p. 409.
- BORST.....2-171  
Arrest, p. 215 ; Cost and Fees, p. 319 ; Imprisoned Debtor, p. 439.
- BOSTON, HARTFORD & ERIE R. R. COMPANY.....5-232  
Stranger, p. 644.
- BOSTON, HARTFORD & ERIE R. R. COMPANY.....5-233  
Assignee, p. 227 ; Corporation, p. 310.
- BOSTON, HARTFORD & ERIE R. R. COMPANY.....6-210  
Corporation, p. 308 ; Different Districts, p. 348 ; Jurisdiction, p. 470 ; Petition, p. 535.
- BOSTON, HARTFORD & ERIE R. R. COMPANY.....6-223  
Adjudication, p. 186.

- BOSTON, HARTFORD & ERIE R. R. COMPANY, ADAMS *v.*.....4-314  
 Crit., p. 30 ; Railroad Corporation, p. 588 ; Sales, p. 613.
- BOSTON, HARTFORD & ERIE R. R. COMPANY, ALDEN *v.*.....5-230  
 Courts, p. 333 ; Railroad Corporation, p. 589 ; Receiver, p. 593.
- BOSTON, HARTFORD & ERIE R. R. COMPANY *et al.*, SWEATT *v.*.....5-234  
 Parties, p. 519.
- BOUND.....4-510  
 Books of Account, p. 272.
- BOUTELLE.....2-129  
 Discharge, p. 361.
- BOWIE.....1-628  
 Assignee, p. 240 ; Bankrupt, p. 265 ; Courts, p. 326 ; Injunction, p. 441 ; Jurisdiction, p. 467 ; Lien, p. 484.
- BOWLES *et al.*, APPLETON *v.*.....9-354  
 Crit., p. 30 ; Assignee, p. 237 ; Courts, p. 332 ; Priority, p. 565.
- BOWMAN *v.* HARDING.....4-20  
 Assignment, p. 252 ; Attachment, p. 258 ; Commencement of Proceedings, p. 282 ; Four and Six Months, p. 413.
- BOWMAN *v.* WAGNER *et al.*.....5-23  
 See PURCELL *v.* WAGNER *et al.*, and TRINN *ex parte* MARSH, post.
- BOYD.....5-199  
 Assets, p. 219 ; Feme Sole, p. 406 ; Husband and Wife, p. 437.
- BOYLAN.....1-2  
 Different Districts, p. 347 ; Discharge, p. 363.
- BOYNTON, C. H.....10-135  
 Partnership, p. 525 : Provable Debt, p. 584.
- BRADSHAY *v.* KLEIN.....1-542  
 Fraud, p. 419, Recovery of Property, p. 595.
- BRADY'S BENT IRON CO., M. & M. NAT. BANK, ETC., *v.*.....5-491  
 Assignee, p. 223.
- BRAND.....3-324  
 Intent, p. 450 ; Taxes, p. 655.
- BRANDT.....2-215  
 Register, p. 600 ; Witness, p. 680.
- BRANDT.....2-345  
 Examination, p. 395 ; Practice, p. 548 ; Register, p. 599.
- BRAY.....2-139  
 Certifying Questions, p. 275.
- BRENT, *In re.*.....8-444  
 Assent, p. 218 ; Composition, p. 290 ; Creditors, p. 335 ; Discharge, p. 363 ; Payment, p. 531.
- BRICK CO., MASSACHUSETTS.....5-408  
 See MASSACHUSETTS BRICK CO., post.
- BRIDGMAN.....1-312  
 Crit., p. 31 ; Lien, p. 480 ; Proof of Debt, p. 576 ; Secured Creditor, p. 623.
- BRIDGMAN.....2-252  
 Attachment, p. 257 ; Courts, p. 329 ; Distribution, p. 371.
- BRIGGS, DEXTER M.....3-638  
 Marshal, p. 493.
- BRINKMAN.....6-541  
 Sales, p. 615.
- BRINKMAN.....7-421  
 Courts, p. 332 ; Foreclosure, p. 411 ; Mortgage, p. 505.
- BRINKMAN *et al.*, WILSON, ETC. *v.*.....2-468  
 Execution, p. 398 ; Insolvency, p. 466 ; Ordinary Course of Business, p. 517 ; Preference, p. 561.
- BRISCO.....2-226  
 Creditors, p. 337 ; Surplus, p. 650.
- BRITTON, ASSIGNEE, *v.* PAYEN & BRENNAN, Sheriff.....9-445  
 Four and Six Months, p. 415.
- BROCK *v.* HOPPOCK.....2-7  
 Crit., p. 31 ; Legal Process, p. 477 ; Supplementary Proceedings, p. 649.
- BROCK *v.* TERRELL.....2-643  
 Lien, p. 484 ; Rent, p. 605.
- BROCKMIRE & RANKIN, BEAN, ETC. *v.* 4-196  
 Crit., p. 30 ; Four and Six Months, p. 413 ; Fraud, p. 425 ; Limitation, p. 488.
- BROCKMIRE & RANKIN, BEAN, ETC. *v.* 7-568  
 Composition, p. 289 ; Equity, p. 381 ; Fraud, p. 418.
- BROCKWAY.....7-595  
 Books of Account, p. 272 ; Evidence, p. 385.
- BRODHEAD.....2-278  
 Assignment, p. 254 ; Contemplation of Bankruptcy, p. 300 ; Evidence, p. 383.
- BROMBEY *v.* SMITH *et al.*.....5-152  
 Assignee, p. 233 ; *Idem*, p. 234 : Proceedings in Bankruptcy, p. 569 ; Proof of Debt, p. 575 ; Usury, p. 668.
- BROMLEY & Co.....3-636  
 Examination, p. 391 ; *Idem*, p. 393.
- BROOKE L. *v.* MCCracken.....10-461  
 Amendment, p. 203 ; Courts, p. 323 ; Fraud, p. 427 ; Knowledge of Insolvency, p. 475 ; Reasonable Cause, p. 592.

- BROOKE, ETC., WOOD M. & R. MACHINE Co. v.**.....9-395  
 Agreement, p. 197; Assets, p. 219; Title, p. 660.
- BROOKS**.....2-466  
 Lien, p. 487.
- BROOKS, WORLD & Co. v.**.....3-588  
 Stay of Proceedings, p. 641.
- BROOME, JAS. E.**.....3-343  
 Pleading, p. 540.
- BROOME, JAS. E.**.....3-444  
 Assignment, p. 252.
- BROWN, JAS. B.**.....3-250  
 Homestead, p. 484.
- BROWN, STEPHEN**.....3-584  
 Debt, p. 340; Judgment, p. 460; Merger, p. 496; Provable Debt, p. 583.
- BROWN, STEPHEN**.....3-720  
 Advances, p. 194; Wages, p. 672.
- BROWN, WEBER & Co., McLEAN et al., v.**.....4-585  
 Crit., p. 34; Suspension of Payment, p. 654.
- BRYAN B. D. v. C. C. SIMS**.....10-540  
 Courts, p. 331.
- BRYAN, G.**.....3-110  
 Lien, p. 487.
- BUCHANAN, WILLIAM**.....10-97  
 Adjournment, p. 183; Discontinuance of Proceedings, p. 369; Intervention, p. 454; Practice, p. 548.
- BUCHANAN, SMITH v.**.....4-397  
 Receiver, p. 592; Title, p. 658.
- BUCHANAN et al. v. SMITH, ASSIGNEE**.....7-513  
 Crit., p. 31; Corporation, p. 308; Insolvency, p. 448; Judgment, p. 458; Reasonable Cause, p. 590; Receiver, p. 593.
- BUCKWELL, WOODS et al. v.**.....7-405  
 Assignee, p. 224; Courts, p. 323; *Idem*, p. 326; Equity, p. 381.
- BUCKHAUSE & GOUGH**.....10-206  
 Debt, p. 341; Partnership, p. 525; Provable Debt, p. 584.
- BUCKNER v. STREET**.....7-255  
 Interpretation, p. 453; Slaves, p. 633.
- BUCYRUS MACHINE Co.**.....5-303  
 Distribution, p. 373; Partnership, p. 525.
- BUGBEE, In re**.....9-258  
 Fiduciary Debt, p. 413; Judgment, p. 459; Surrender, p. 652.
- BUNSTER**.....5-82
- Discharge, p. 359; Fifty per Cent., p. 408.
- BURCH, THOMAS F., In re**.....10-150  
 Amendment, p. 205; Petition, p. 534; Pleading, p. 537.
- BURFEE v. FIRST NATIONAL BANK OF JANESVILLE**.....9-314  
 Answer, p. 208; Fraud, p. 427; Judgment, p. 460; Mortgage, p. 500; Pleading, p. 540; *Idem*, p. 542.
- BURGESS, JOS.**.....3-196  
 Books of Account, p. 271; Discharge, p. 363; Evidence, p. 384.
- BURGESS, BABBITT, ETC., v.**.....7-561  
 Assignee, p. 230; *Idem*, p. 231; Commencement of Proceedings, p. 283; Demurrer, p. 344; Evidence, p. 385; Notice, p. 513; Payment, p. 530; Pleading, p. 542.
- BURK**.....3-296  
 Discharge, p. 365; Limitation, p. 490; Residence, p. 608; Specification, p. 635.
- BURKHOLDER et al. v. STUMP**.....4-597  
 Crit., p. 31; Assignee, p. 242; Assignment, p. 256; Cost and Fees, p. 313; Practice, p. 547.
- BURNHAM, UPTON v.**.....8-221  
 Assignee, p. 234; Corporation, p. 308; Stockholder, p. 643; Waiver, p. 674.
- BURNS ex parte BURNS**.....1-174  
 Courts, p. 333; Fraud, p. 422; Injunction, p. 445; Judgment, p. 457.
- BURPER et al. v. SPARHAWK**.....4-684
- BURTON et al., SAMSON v.**.....4-1  
 Courts, p. 322; *Idem*, p. 334; Stay of Proceedings, p. 641.
- BURTON et al., SAMSON v.**.....5-459  
 Crit., p. 35; Injunction, p. 443.
- BURTON et al., SAMSON v.**.....6-403  
 Supplementary Proceedings, p. 648.
- BUSE**.....3-215
- BUSH, L.**.....6-179  
 Adjudication, p. 191; Assignment, p. 252; Compromise, p. 291; Discontinuance of Proceedings, p. 368; Notice, p. 512; Parties, p. 518; Want of Notice, p. 674.
- BUSH v. CRAWFORD**.....7-299  
 Commercial Paper, p. 287; Endorser, p. 378; Partnership, p. 524; Provable Debt, p. 581.
- BUSHEY**.....3-685  
 Assignee, p. 243.
- BUTLER**.....4-302

- Mortgage, p. 499 ; Ordinary Course of Business, p. 517.
- BUTLER, H. L.....6-501  
Lien, p. 484 ; Rent, p. 606.
- BUTLER, WHITMAN *v.*.....8-487  
Advice of Counsel, p. 195 ; Foreclosure, p. 412 ; Sales, p. 616 ; Stay of Proceedings, p. 640.
- BUTTERFIELD, D. C.....6-257  
Attorney and Counsel, p. 260 ; Discontinuance of Proceedings, p. 368.
- BYRNE.....1-464  
Assets, p. 222 ; Distribution, p. 378 ; Dividend, p. 375 ; Joint Liability, p. 455 ; Partnership, p. 528 ; Transfer, p. 661.
- CAEN, MOSSELMAN & POELAERT *v.*...10-513  
Assignee, p. 228 ; Courts, p. 330 ; Foreign Laws, p. 413.
- CALDWELL, PAINE *v.*.....6-558  
Different Districts, 348 ; Jurisdiction, p. 468.
- CAMDEN ROLLING MILL CO.....8-590  
Discontinuance of Proceedings, p. 367 ; *Idem*, p. 368 ; Parties, p. 519 ; Practice, p. 548 ; *Idem*, p. 553.
- CAMERON *v.* CANIEO & CO.....9-527  
Different Districts, p. 348 ; Jurisdiction, p. 471.
- CAMP.....1-242  
Stay of Proceedings, p. 637.
- CAMPBELL, HUGH.....1-165  
Crit., p. 31 ; After-Acquired Property, p. 196 ; Construction, p. 297 ; Discharge, p. 355 ; Injunction, p. 445 ; Lien, p. 480 ; *Idem*, p. 481.
- CAMPBELL, ANSHUTZ *v.*.....8-527  
Assignee, p. 230 ; Execution, p. 397 ; Injunction, p. 441.
- CAMPBELL, G. W., ETC., *v.* THE TRADERS' NAT. BANK OF CHICAGO & HOTCHKISS & SONS.....3-498  
Crit., p. 31 ; Intent, p. 451 ; Preference, p. 556 ; *Idem*, p. 558 ; *Idem*, p. 561 ; Suffering Property to be Taken, p. 646.
- CAMPBELL, ETC., THE TRADERS' NAT. BANK OF CHICAGO *v.*.....6-353  
Assignee, p. 234 ; *Idem*, p. 236 ; Confession of Judgment, p. 294 ; Creditors, p. 336 ; Execution, p. 399 ; Parties, p. 518 ; Preference, p. 555.
- CANADAY, BENJ. F.....3-11  
Application for Discharge, p. 213 ; Discharge, p. 350 ; Time, p. 656.
- CANAL NAT. BANK, EMERY *et al.* *v.*...7-217  
Dividend, p. 375.
- CANIEO & CO., CAMERON *v.*.....9-527  
Different Districts, p. 348 ; Jurisdiction, p. 471.
- CAPURO *et al.* WILSON, *v.*.....4-714  
Assets, p. 220 ; Stay of Proceedings, p. 641 ; Waiver, p. 674.
- CAROW.....4-544  
Cost and Fees, p. 318 ; Insurance, p. 443 ; Practice, p. 549 ; Title, p. 658.
- CARPENTER.....1-299  
Bankrupt, p. 265 ; Examination, p. 392.
- CARPENTER, JAMES *v.* .....4-412  
Crit., p. 33 ; Commercial Paper, p. 285.
- CARSON, JAMES.....5-290  
Amendment, p. 207 ; Assignee, p. 250 ; Practice, p. 547.
- CARSON & HARD.....2-107
- CARSON, HUMBLE & CO. *v.*.....6-84  
Discharge, p. 352.
- CARTER, W.....6-299  
Commercial Paper, p. 285.
- CARTER, HALLIBURTON *v.*.....10-359  
Fiduciary Debt, p. 407 ; Guardian, p. 432 ; Surety, p. 649.
- CARTER, MENDESHALL *v.*.....7-320  
Acts of Bankruptcy, p. 180 ; Confederate Money, p. 292 ; Suspension of Payment, p. 655.
- CASE *v.* PHELPS *et al.*.....5-453  
Fraud, p. 430 ; Settlement on Wife, p. 631.
- CASEY, E. W .....8-71  
Amendment, p. 205 ; Appeal, p. 209 ; *Idem*, p. 210 ; Equity, p. 381 ; Jurisdiction, p. 467 ; Foreclosure, p. 411 ; Mortgage, p. 505 ; Order, p. 515 ; Practice, p. 552 ; Review, p. 611 ; Summary Proceedings, p. 648.
- CASSARD *et al.* *v.* KRONER.....4-569  
Insolvent Laws, p. 449 ; State Insolvent Laws, p. 636.
- CATLIN, ASSIGNEE *v.* FOSTER.....3-540  
Crit., p. 31 ; Mutual Debts, p. 509 ; Set-off, p. 629.
- CATLIN, ASSIGNEE, *v.* HOFFMAN.....9-342  
Conveyance, p. 304 ; Evidence, p. 386 ; Intent, p. 452 ; Judgment, p. 460 ; *Idem*,



- p. 461; Lien, p. 481; Notice, p. 513; Procuring and Suffering to be Taken, p. 572; Secured Creditors, p. 622.
- CENTRAL BANK**.....6-207  
Action, p. 182; Court, p. 332.
- CHAMBERLAIN & CHAMBERLAIN**....8-710  
Assignee, p. 226; Fraud, p. 480; Intent, p. 451; Proof of Debt, p. 576.
- CHANDLER**.....4-213  
Crit., p. 81; Commercial Paper, p. 283; Lumberman, p. 491; Manufacturer, p. 491.
- CHANDLER, P. K.**.....9-514  
Debt, p. 342; Provable Debt, p. 585; Wagering Contract, p. 672.
- CHANDLER v. SIDDLE**.....10-236  
Action, p. 182; Corporation, p. 311; Court, p. 330; Jurisdiction, p. 463; Stock, p. 642.
- CHARTERED BANK OF INDIA, AUSTRALIA, AND CHINA v. EVANS et al.**....4-186  
Assets, p. 221; Fraud, p. 426; Secured Creditor, p. 620.
- CHAPPELL**.....4-540  
Commercial Paper, p. 284; Demand, p. 344; Pleading, p. 544.
- CHATTANOOGA R. R. Co., ALABAMA AND, v. JONES**.....5-97  
Absence, p. 172; Adjudication, p. 187; Appearance, p. 212; Attorney and Counsel, p. 260; *Idem*, p. 261; Construction, p. 299; Courts, p. 324; Pleading, p. 543; Proceedings in Bankruptcy, p. 568; Railroad Corporation, p. 589; Service of Papers, p. 628.
- CHATTANOOGA R. R. Co., ALABAMA AND, v. JONES**.....7-145  
Amendment, p. 206; Courts, p. 323; *Idem*, p. 324; Jurisdiction, p. 464; Record, p. 595.
- CHENEY, KNIGHT v.**.....5-305  
Sales, p. 614; Summary Proceedings, p. 648.
- CHILDS, WILSON v.**.....8-527  
Assignee, p. 230; Execution, p. 397; Injunction, p. 441; Priority, p. 566.
- CHRISTMAN v. HAYNES**.....8-528  
Assignee, p. 234; Execution, p. 399; Procuring and Suffering to be Taken, p. 571.
- CHRISTLEY**.....10-268  
Acknowledgment, p. 173; Attorney and Counsel, p. 261; Power of Attorney, p. 546.
- CITIZENS' SAVINGS BANK, In re**.....9-152  
Courts, p. 322; Stay of Proceedings, p. 638.
- CITIZENS' SAVINGS BANK, WATSON v.**.....9-458  
Attorney and Counsel, p. 261; Contempt, p. 302.
- CITY BANK OF SAVINGS, LOAN AND DISCOUNT**.....6-71  
Assignment, p. 251; Set-off, p. 629.
- CITY BANK OF ST. PAUL, WILSON v.**5-270  
Crit., p. 36; Insolvency, p. 448.
- CITY BANK OF ST. PAUL, WILSON v.**9-97  
Crit., p. 36; Acts of Bankruptcy, p. 179; Judgment, p. 461; Lien, p. 479; Procuring and Suffering to be Taken, p. 571; Suffering Property to be Taken, p. 646.
- CITY NATIONAL BANK OF GRAND RAPIDS, MICHIGAN, FOURTH NAT. BANK OF CHICAGO v.**.....10-44  
Assignee, p. 238; Cheque, p. 279; Lien, p. 480.
- CLAFLIN et al., BINGHAM v.**.....7-412  
Crit., p. 81; Assignee, p. 238; Courts, p. 328.
- CLAIRMONT**.....1-276  
Assignee, p. 223; Attorney and Counsel, p. 263.
- CLANCY, JOHN**.....10-215  
Advances, p. 194; Claim, p. 280; Evidence, p. 387; Lease, p. 477; Rent, p. 607.
- CLARK, ISAAC**.....1-188  
Cost and Fees, p. 318.
- CLARK, ABRAHAM B., In re**.....9-67  
Account, p. 172; Assignee, p. 243; Countersigning Cheques, p. 320; Creditors, p. 334.
- CLARK, SAMUEL D.**.....8-16  
Discharge, p. 359.
- CLARK, BEECHER v.**.....10-385  
Concealment, p. 292; Fraud, p. 420.
- CLARK & BININGER**.....3-385, 481, 487  
Courts, p. 324; Jurisdiction, p. 464.
- CLARK & BININGER**.....3-489, 491  
Assignee, p. 229; Courts, p. 333.
- CLARK & BININGER**.....3-518, 524  
Courts, p. 322.
- CLARK & BININGER**.....5-255  
Proof of Debt, p. 578; Secured Creditor, p. 624; Withdrawal of Papers, p. 679.

- CLARK & BININGER.....6-194  
Meetings of Creditors, p. 496.
- CLARK & BININGER.....6-197  
Assignee, p. 243 ; Meetings of Creditors, p. 496.
- CLARK & BININGER.....6-202  
Certifying Questions, p. 276 ; Proof of Debt, p. 574.
- CLARK & BININGER.....6-204  
Meetings of Creditors, p. 496.
- CLARK v. BININGER .....3-518  
Courts, p. 331 ; Jurisdiction, p. 463.
- CLARK v. BININGER.....3-524  
Jurisdiction, p. 469.
- CLARK & BURTON, SAMSON v.....6-403  
Courts, p. 327 ; Examination, p. 388 ; Order, p. 515 ; Petition, p. 535 ; Stay of Proceedings, p. 640.
- CLARK v. DAUGHTREY.....10-21  
Creditors, p. 333 ; Surrender, p. 652 ; Trustee, p. 666.
- CLARK v. ISLIN *et al.*.....9-19  
Confession of Judgment, p. 294 ; Preference, p. 562 ; Secured Creditor, p. 623.
- CLARK, WEST, MAXWELL & DAVIS..4-237  
Examination, p. 396 ; Wife of Bankrupt, p. 678.
- CLARK, UNITED STATES v.....4-59  
Indictment, p. 440 ; Misdemeanor, p. 498.
- CLARKE.....2-110  
Fraud, p. 420 ; Opposing Discharge, p. 514.
- CLASEN, PHELPS v.....3-87  
See Phelps v. Clasen, *post*.
- CLEMENS.....8-279  
Crit., p. 31 ; Accommodation Note, p. 172 ; Acts of Bankruptcy, p. 180 ; Suspension of Payment, p. 655.
- CLEMENS.....9-57  
Crit., p. 31 ; Accommodation Note, p. 172 ; Acts of Bankruptcy, p. 175 ; Commercial Paper, p. 285 ; Endorser, p. 377.
- CLEVELAND INSURANCE CO., STARK-WEATHER, ETC., v.....4-341  
Assignment, p. 251 ; Insurance, p. 449 ; Transfer, p. 662.
- CLIFTON *et al.* v. FOSTER *et al.*.....3-656  
Courts, p. 331.
- CLINTON, GROVER & BAKER v.....8-312  
Arrest, p. 215 ; Discharge, p. 355 ; Fiduciary Debt, p. 407.
- CLOUGH.....2-151  
Damages, p. 339.
- COATES & BROTHERS, DUNDORRE v...6-304  
Cost and Fees, p. 314 ; Petition, p. 534.
- COBB.....1-414  
Exemption, p. 402 ; *Idem*, p. 403.
- COGDELL v. EXUM.....10-327  
Action, p. 182 ; Amendment, p. 199 ; Assignee, p. 238 ; Courts, p. 329 ; Limitation, p. 489.
- COGGESHALL, POTTER *et al.* v.....4-73  
Mortgage, p. 501 ; Secured Creditor, p. 623.
- COGSWELL.....1-62  
Assignee, p. 223 ; Meetings of Creditors, p. 495.
- COHN, B.....7-31  
Acts of Bankruptcy, p. 174 ; Adjudication, p. 188 ; Arrest, p. 217.
- COHN, I. S.....6-379  
Assignee, p. 228 ; Compensation, p. 288 ; Cost and Fees, p. 313.
- COHN, ISAACS &.....6-92  
Separate Claims, p. 627.
- COIT v. ROBINSON *et al.*.....9-289  
Courts, p. 323 ; *Idem*, p. 326 ; Discharge, p. 364 ; Jurisdiction, p. 473 ; Jury Trial, p. 474 ; Specification, p. 285.
- COLE v. ROACH.....10-288  
Claim, p. 280 ; Courts, p. 329 ; Damages, p. 339 ; Discharge, p. 354 ; Discontinuance of Proceedings, p. 370 ; Pleading, p. 540 ; Provable Debt, p. 585.
- COLE *et al.*, SCAMMON v.....3-393  
Crit., p. 35 ; Preference, p. 559.
- COLE *et al.*, SCAMMON v.....5-257  
Appeal, p. 210 ; Courts, p. 326 ; Equity, p. 380 ; Jurisdiction, p. 466 ; Mortgage, p. 499 ; Preference, p. 560.
- COLEMAN.....2-671  
Appeal, p. 209 ; Discontinuance of Proceedings, p. 367.
- COLLINS.....10-335  
Acts of Bankruptcy, p. 173 ; Adjudication, p. 189 ; Bankrupt, p. 266 ; Married Woman, p. 492.
- COLLINS, JOHN C.....1-551  
Attorney and Counsel, p. 262 ; Examination, p. 393.
- COLLINS & FARRINGTON, ASSIGNEE, v. BELL *et al.*.....3-587  
Ordinary Course of Business, p. 516.

- COLLINS v. GRAY et al.**.....4-631  
Construction, p. 298; Four and Six Months, p. 413.
- COLLINS, TENNEY & GREGORY v.**....4-477  
Evidence, p. 384; Specification, p. 635; Wife of Bankrupt, p. 678.
- COLMAN**.....2-563  
Chattel Mortgage, p. 276.
- COLUMBIAN METAL WORKS**.....8-75  
Practice, p. 548; Sales, p. 612.
- COMMONWEALTH v. O'HARA**.....1-86  
Arrest, p. 215; State Insolvent Laws, p. 636.
- COMMONWEALTH v. WALKER et al.**...4-672  
Conspiracy, p. 296; Courts, p. 329; Criminal Proceedings, p. 838; Indictment, p. 440; Pleading, p. 542.
- COMPTON & DOAN, DOAN v.**.....2-608  
Acts of Bankruptcy, p. 177; *Idem*, p. 180; Preference, p. 508; Suspension of Payment, p. 653.
- COMSTOCK, C. B. & Co.**.....10-451  
Amendment, p. 201.
- COMSTOCK, EUGENE et al.**... ..9-88  
Cost and Fees, p. 318; Marshal, p. 494; Petition, p. 534.
- COMSTOCK et al., KNICKERBOCKER INS. COMPANY v.**.....8-145  
Courts, p. 325; Practice, p. 554; Writ of Error, p. 8-145.
- COMSTOCK et al., KNICKERBOCKER INS. COMPANY v.**.....9-484  
Debt, p. 340; Insurance, p. 450.
- COMSTOCK & Co.**.....10-451  
Adjudication, p. 187.
- COMSTOCK v. WHEELER**.....2-561  
Order, p. 515; Practice, p. 551; Vacating Proof, p. 669.
- COMSTOCK & YOUNG** .....5-191  
Attorney and Counsel, p. 264; Cost and Fees, p. 314; *Idem*, p. 315.
- CONE & MORGAN**.....2-21  
Acts of Bankruptcy, p. 179; Pleading, p. 543; Suspension of Payment, p. 653.
- CONNELL**.....8-443  
Discharge, p. 859.
- CONNER v. THE SOUTHERN EXPRESS COMPANY**.....9-138  
Pending Suit, p. 532; Pleading, p. 539.
- CONRAD, WALLACE v.**.....8-41  
Assignee, p. 241; Subrogation, p. 645.
- COOK et al., ASSIGNEES v. TULLIS**....9-433  
Preference, p. 559; Substitution, p. 645; Trust, p. 665.
- COOK, GARDNER v.**.....7-346  
Crit, p. 32; Assignee, p. 244; Cost and Fees, p. 312; Custody of Property, p. 338; Provable Debt, p. 582.
- COOK, JAY, & Co.**.....10-126  
Appeal, p. 208; Assignee, p. 289; Bankrupt, p. 265; Examination, p. 390.
- COOK v. WATERS et al.**.....9-155  
Action, p. 182; Appropriation of Payments, p. 213; Assignee, p. 230; *Idem*, p. 235; *Idem*, p. 238; Confession of Judgment, p. 293; Courts, p. 328; *Idem*, p. 329; Discretion, p. 370; Jurisdiction, p. 469; Remedy, p. 604.
- COOKINGHAM, ASSIGNEE, v. FERGUSON**.....4-635  
Fraud, p. 426; Intent, p. 451.
- COOKINGHAM v. MORGAN et al.**.....5-16  
Assignment, p. 255; Intent, p. 451.
- COOLIDGE, HAMMOND v.**.....3-273  
Assignee, p. 241; Books of Account, p. 271; Consignment, p. 296.
- COOPER et al., FIRST NAT. BANK, v.**..9-529  
Appeal, p. 211; Courts, p. 328; Proof of Debt, p. 575.
- CORBIN, POST v.**.....5-11  
Equity, p. 380; Jurisdiction, p. 466; Remedy, p. 604.
- CORRY et al. v. RIPLEY**.....4-503  
Courts, p. 330; Discharge, p. 359.
- CORNER v. MILLER et al.**.....1-403  
Attachment, p. 257; Bankrupt Act, p. 266.
- CORNWALL**.....6-805  
Consideration, p. 295; Conveyance, p. 305; Creditors, p. 336; Debt, p. 341; Fraud, p. 418; Limitation, p. 490.
- CORNWALL**.....4-400  
Commercial Paper, p. 286; Consideration, p. 295.
- CORRIGAN, HYDE & Co. v.**.....9-466  
Procuring and Suffering to be Taken, p. 571.
- COTTING, CRONAN v.**.....4-667  
Construction, p. 298; Fiduciary Debt, p. 407.
- COULTER**.....5-64  
Lien, p. 483; Mechanic's Lien, p. 494.
- COWLES**.....1-280  
Acts of Bankruptcy, p. 176; Chattel Mortgage, p. 276; Commercial Paper, p. 288; Fraud, p. 429; Lumberman, p. 491; Mortgage, p. 498; Suspension of Payment, p. 653; Trader, p. 661.

- COX *v* WILDER *et al*.....5-443  
 Crit., p. 31; Practice, p. 551.
- COX *v* WILDER *et al* .....7-241  
 Crit., p. 31; Assignee, p. 229; Fraud,  
 p. 431; Homestead, p. 433.
- COXE *v* HALE.....8-562  
 Assignee, p. 248; Execution, p. 397;  
 Procuring and Suffering to be Taken, p.  
 571.
- COZART .....8-508  
 Lien, p. 483.
- COZZENS & HALL, CREDITORS *v*.....8-281  
 Contempt, p. 301.
- CRAFT.....1-378  
 Amendment, p. 204; Confession of  
 Judgment, p. 293; Insolvency, p. 446;  
 Procuring and Suffering to be Taken, p.  
 570.
- CRAFT.....2-111  
 Crit., p. 31; Amendment, p. 204;  
 Pleading, p. 537.
- CRAIG .....8-100  
 Examination, p. 395.
- CRAM.....1-504  
 Endorser, p. 377; Secured Creditor,  
 p. 621.
- CRANE, HARVEY *v*.....5-218  
 Crit., p. 33; Chattel Mortgage, p. 278;  
 Lien, p. 486; Mortgage, p. 508; *Idem*,  
 506; Preference, p. 560.
- CRAWFORD.....8-698  
 Judgment, p. 460; Provable Debt, p.  
 586.
- CRAWFORD, FRANCIS .....5-301  
 Crit., p. 32; Endorser, p. 379; Prov-  
 able Debt, p. 581.
- CRAWFORD, BUSH *v*.....7-299  
 Commercial Paper, p. 287; Endorser,  
 p. 378; Partnership, p. 524; Provable  
 Debt, p. 581.
- CRAWFORD *et al*., FARREN *v*.....2-602  
 Acts of Bankruptcy, p. 175; *Idem*, 177;  
 Assignment, p. 254; Preference, p. 557.
- CRAWFORD, SMITH *v*.....9-38  
 Limitation, p. 489.
- CREDITORS *v* COZZENS & HALL .....8-281  
 Contempt, p. 301.
- CREDITORS, MEEKINS, KELLY & COM-  
 PANY *v*.....8-511  
 Courts, p. 331; Insolvent Laws, p. 449.
- CREDITORS *v* WILLIAMS .....4-579  
 Commencement of Proceedings, p. 282;  
 Opposing Discharge, p. 514; Power of  
 Attorney, p. 546.
- CRETIEW.....5-423  
 Bankrupt Act, p. 267; Construction,  
 p. 299; Discharge, p. 361.
- CROCKETT & SCHRAMME.....2-208  
 Assets, p. 219; Dissolution of Part-  
 nership, p. 371; Partnership, p. 521;  
*Idem*, p. 526; Torts, p. 660.
- CRONAN *v* COTTING.....4-667  
 Construction, p. 298; Fiduciary Debt,  
 p. 407.
- CROWLEY & HOBLITZELL.....1-516  
 Amendment, p. 205; Pleading, p. 537.
- CULVERS, PENN &.....5-288  
 See Penn & Culvers, *post*.
- CURRAN *et al* *v* MUNGER *et al*.....6-33  
 Acts of Bankruptcy, p. 178; Agent, p.  
 196; Demurrer, p. 344; Knowledge of  
 Insolvency, p. 475; Review, p. 610.
- CURTIS *et al*., PRATT, Jr., *v*.....6-139  
 Conveyance, p. 305; Four and Six  
 Months, p. 414; Fraud, p. 417; *Idem*, p.  
 419; Jurisdiction, p. 467; Setting Aside  
 Conveyance, p. 630.
- DAGGETT.....8-287  
 Crit., p. 32; Administrator, p. 192;  
 Partnership, p. 521.
- DAGGETT.....8-433  
 Crit., p. 32; Courts, p. 326.
- DAMRON, LAMB, ETC., *v*.....7-509  
 Different Districts, p. 349; Jurisdic-  
 tion, p. 465.
- DARBY.....4-211  
 Carrying on Business, p. 274; Proof  
 of Debt, p. 575; Trustee, p. 665.
- DARBY.....4-309  
 Crit., p. 32; Arrangement, p. 214; Pro-  
 ceedings in Bankruptcy, p. 568; Trustee,  
 p. 665.
- DARBY'S TRUSTEES *v* BOATMANS' SAVINGS  
 INSTITUTION.....4-600  
 Crit., p. 32; Advances, p. 193; Equity,  
 p. 380; Interest, p. 452; Loans, p. 490.
- DARBY'S TRUSTEES *v* LUCAS .....5-437  
 Crit., p. 32; Preference, p. 555.
- DAUGHTREY & CLARKE.....10-21  
 Creditors, p. 338; Surrender, p. 653;  
 Trustee, p. 666.
- DAVENPORT.....8-77  
 Cost and Fees, p. 313; *Idem*, p. 314.
- DAVIDSON, G. J. G.....2-114  
 Claim and Delivery, p. 280; Courts, p.  
 333.

- DAVIDSON, C. A. .... 8-418  
Suffering Property to be Taken, p. 646; Surrender, p. 651.
- DAVIS, IRWIN ..... 4-716  
Courts, p. 881; Jurisdiction, p. 471.
- DAVIS, IRWIN ..... 8-167  
Courts, p. 827; Equity, p. 881.
- DAVIS, JOHN ..... 8-389  
Acts of Bankruptcy, p. 174; Arrest, p. 217; Suspension of Payment, p. 654.
- DAVIS, ASSIGNEE OF BITTEL *et al.* v. 2-891  
Sales, p. 611; Secured Creditor, p. 626
- DAVIS v. ANDERSON *et al.* ..... 6-146  
Assignee, p. 242; Assignment, p. 253; Custody of Property, p. 338; Execution, p. 399; Fraud, p. 423; Life Insurance, p. 488; Sales, p. 614; Secured Creditor, p. 624; Time, p. 657; Title, p. 659; Two Years, p. 666.
- DAVIS & GREEN v. ARMSTRONG ..... 8-84  
Fraud, p. 480; Ordinary Course of Business, p. 516.
- DAVIS, MILLS v. .... 10-340  
Bankrupt, p. 266; Execution, p. 397; Money, p. 498; Sheriff, p. 633.
- DAVIS & SON ..... 1-120  
Assignee, p. 226; Secured Creditor, p. 626.
- DAVIS, SUTHERLAND v. .... 10-424  
Assignment, p. 252; Bankrupt, p. 265; Pleading, p. 537; Title, p. 660.
- DAWSON, STREET v. .... 4-208  
See Street v. Dawson, *post*.
- DEY, JAMES R. .... 8-305  
Crit., p. 82; Lien, p. 485.
- DAY v. BARDWELL ..... 8-455  
Insolvent Laws, p. 449.
- DEAN CALLOWAY ..... 8-768  
Lien, p. 481.
- DEAN, JOHN W. .... 1-249
- DEAN & GARRETT ..... 2-89  
Affidavit, p. 195; Fraud, p. 424; Ordinary Course of Business, p. 516; Sales, p. 611.
- DEARBORN *et al.*, PARTRIDGE v. .... 9-474  
Assignee, p. 232; Judgment, p. 462; Lien, p. 484.
- DECKERT ..... 10-1  
Crit., p. 82; Amendment, p. 200; Constitutionality, p. 297; Exemption, p. 400.
- DE FOREST ..... 9-278  
Proceedings in Bankruptcy, p. 568; Setting Aside Conveyance, p. 631.
- DELAWARE AND HUDSON CANAL CO., LITTLEFIELD v. .... 4-258  
Courts, p. 324; Jurisdiction, p. 464; Pleading, p. 541; Review, p. 609.
- DELAWARE, LACKAWANNA AND WESTERN R. R. Co., WARREN v. .... 7-451  
See Warren v. Delaware, &c., *post*.
- DERBY ..... 8-106  
Acts of Bankruptcy, p. 173; Adjudication, p. 186; *Idem*, p. 189; *Idem*, p. 191; Minor, p. 497; Provable Debt, p. 584; Service of Papers, p. 628; Setting Aside Conveyance, p. 630.
- DEVLIN & HAGAN ..... 1-35  
Meeting of Creditors, p. 495; Notice, p. 513.
- DEVOE ..... 2-27  
Alias Execution, p. 195; Arrest, p. 216; *Idem*, p. 217; Evidence, p. 388; Habeas Corpus, p. 432; Representation, p. 607.
- DEWEY ..... 4-412  
Assignee, p. 249.
- DEWEY, HALLEMAN v. .... 7-269  
Confederate Money, p. 292; Payment, p. 530; War, p. 675.
- DEWEY *et al.*, STATE OF N. C., v. TRUSTEES OF UNIVERSITY AND. .... 5-466  
Courts, p. 325; Jurisdiction, p. 471.
- DIBBLEE *et al.* ..... 2-617  
Crit., p. 82; Acts of Bankruptcy, p. 177; Fiduciary Debt, p. 407; Insolvency, p. 447; Ordinary Course of Business, p. 517; Power of Attorney, p. 546; Preference, p. 557; *Idem*, p. 561; Suffering Property to be Taken, p. 645.
- DIBBLEE *et al.* ..... 8-754  
Practice, p. 549.
- DIBBLEE *et al.* ..... 8-72  
Arrangement, p. 214; Compromise, p. 290.
- DIETZ, PAYSON v. .... 8-193  
Action, p. 182; Assignee, p. 236; *Idem*, p. 237; Courts, p. 323; *Idem*, p. 327; *Idem*, p. 329; Jurisdiction, p. 466.
- DILLARD ..... 9-8  
Amendment, p. 200; Assignee, p. 247; Bankrupt Court, p. 269; Constitutionality, p. 297; Exemption, p. 400; Lien, p. 481; Proof of Debt, p. 579; Sales, p. 616; Setting aside Conveyance, p. 631.
- DINGEE v. BECKER ..... 9-508  
Discharge, p. 364; Remedy, p. 604.
- DOAN v. COMPTON & DOAN ..... 2-607  
Acts of Bankruptcy, p. 177; *Idem*, p. 180; Preference, p. 508; Suspension of Payment, p. 653.

- DODD, BROWN & Co., GIDDINGS *v.*...4-657  
Intent, p. 451; Procuring and Suffering to be Taken, p. 570.
- DODGE.....1-435  
Assets, p. 220; Discharge, p. 352.
- DOE.....2-308  
Assignee, p. 227.
- DOLE.....7-538  
Examination, p. 394.
- DOLE.....9-193  
Crit., p. 32; Discharge, p. 359; Examination, p. 394; Jurisdiction, p. 472.
- DONALDSON.....1-181  
Courts, p. 331; Equity, p. 380; Foreclosure, p. 411; Lien, p. 480; Sales, p. 611; Stay of Proceedings, p. 639.
- DONOHUE & PAGE, *in re.*.....8-453  
Cost and Fees, p. 317; *Idem*, p. 318; Interest, p. 452; Marshal, p. 493.
- DOODY.....2-201  
Discharge, p. 360; Fraud, p. 420.
- DOUGHERTY, O'NEIL *v.*.....10-294  
Adjudication, p. 192; Appeal, p. 208; Assignee, p. 240.
- DOW.....6-10  
Assignee, p. 229; Assignment, p. 253; Jurisdiction, p. 464; Mortgage, p. 506; Review, p. 610.
- DOWNING, WILLIAM.....3-741  
Cost and Fees, p. 318.
- DOWNING, WILLIAM.....3-748  
Crit., p. 32; Distribution, p. 374; Marshalling of Assets, p. 494; Partnership, p. 525.
- DOWNING, L. T., KENT & Co. *v.*.....10-538  
Attachment, p. 257.
- DOYLE, LOUIS I. ....8-640  
Bankrupt, p. 265; Discharge, p. 366.
- DOYLE, PHILIP A. ....8-782  
Discharge, p. 357.
- DRAKE *v.* ROLLO.....4-689  
Mutual Debts, p. 509; Set-off, p. 629.
- DRESSER.....3-557  
Contempt, p. 301.
- DREYER.....2-212  
Discharge, p. 361.
- DRIGGS, ETC., *v.* RUSSELL *et al.*.....3-161  
Husband and Wife, p. 437; Married Woman, p. 492.
- DRIGGS, ETC., *v.* MOORE, FOOTE & Co. 3-602  
Fraud, p. 427; Preference, p. 560.
- DRUMMOND. ....1-231  
Acts of Bankruptcy, p. 177; Adjudication, p. 187; Fraud, p. 425.
- DUDLEY, PHELPS *v.*.....4-34  
See Phelps *v.* Dudley, *post*.
- DUMONT.....4-17  
Fraud, p. 424; Mortgage, p. 502.
- DUNKLE & DREISBACH.....7-73  
Adjudication, p. 191; Claim and Delivery, p. 281; Evidence, p. 385; Execution, p. 396; Injunction, p. 444; Procuring and Suffering to be Taken, p. 571.
- DUNKLE & DREISBACH.....7-107  
Consideration, p. 295; Notice, p. 513; Partnership, p. 524;
- DUNDORE *v.* COATES & BROS. ....6-304  
Cost and Fees, p. 314; Petition, p. 534.
- DUNN *et al.*... ..9-487  
Testimony, p. 656.
- DUPEE, I. E. ....6-89  
Courts, p. 326.
- DURHAM & ORR.....2-17  
Acts of Bankruptcy, p. 176; *Idem*, p. 181; Denial of Bankruptcy, p. 345; Pleading, p. 541; Secured Creditor, p. 622; Transfer, p. 661.
- DUSENBURY *v.* HOYET.....10-313  
Debt, p. 341; Discharge, p. 363; New Promise, p. 511; Pleading, p. 542.
- DYKE & MARR, *in re.*.....9-430  
Lien, p. 485; Rent, p. 606.
- EARLE.....3-304  
Witness, p. 680.
- EASON, F. E. LUMPKIN *v.*.....10-549  
Homestead, p. 435; Husband and Wife, p. 437.
- ECFORD & PETRING *v.* GREELEY....6-433  
Acts of Bankruptcy, p. 178; Assignment, p. 255; Composition, p. 290.
- ECKSTEIN, FOX *v.*.....4-373  
Acts of Bankruptcy, p. 175; Adjudication, p. 187; Concealment, p. 293; Sales, p. 613.
- EDITH, SHIP.....6-449  
Constitutionality, p. 297; Lien, p. 485; Mortgage, p. 507; Proceedings in Rem, p. 569.
- EDMONDSON *v.* HYDE.....7-1  
Assignee, p. 229; Claim and Delivery, p. 280; Exemption, p. 404; Fraud, p. 417; Gold Coin, p. 431; Mortgage, p. 504; Payment, p. 531.
- EDWARDS, LEROY T. ....2-349  
Exemption, p. 403.
- EIDOM, I. D. ....3-106  
Pleading, p. 543; Specification, p. 635.



- EIDOM, I. D.** . . . . . 3-160  
Attorney and Counsel, p. 264; Cost and Fees, p. 316.
- ELDER, GEO.** . . . . . 3-670  
Proof of Debt, p. 573; *Idem*, p. 574; *Idem*, p. 576.
- ELDRED.** . . . . . 3-256  
Husband and Wife, p. 438.
- ELDRIDGE.** . . . . . 4-498  
Assignee, p. 230; Chattel Mortgage, p. 278; Cost and Fees, p. 318; Fixtures, p. 410; Preference, p. 560.
- ELFELT et al., v. SNOW et al.** . . . . . 6-57  
Action, p. 181; Composition, p. 289; Fraud, p. 428; Representation, p. 607.
- ELLERHORST et al.** . . . . . 7-49  
Cost and Fees, p. 318; Sales, p. 615.
- ELLERHORST & Co.** . . . . . 5-144  
Debt, p. 340; Endorser, p. 379; Provable Debt, p. 581.
- ELLIOT.** . . . . . 2-110  
Discharge, p. 356; Fiduc'y Debt, p. 407.
- ELLIS.** . . . . . 1-555  
Attachment, p. 257; *Idem*, p. 259; Sales, p. 611.
- ELY, VINCENT M. SMITH, v.** . . . . . 10-553  
Assignee, p. 235; Chattel Mortgage, p. 278; Setting aside Conveyance, p. 630.
- EMERSON, STEWART v.** . . . . . 8-462  
Assumpsit, p. 256; Discharge, p. 355; Fraud, p. 428; Pleading, p. 539.
- EMERY et al., ASSIGNEES, v. CANAL NATIONAL BANK.** . . . . . 7-217  
Dividend, p. 375.
- EMISON.** . . . . . 2-595  
Proof of Debt, p. 578; Withdrawal of Papers, p. 679.
- ERBEN.** . . . . . 2-181  
Exemption, p. 401.
- ERIE RAILROAD Co., BOSTON, HARTFORD & ALDEN v.** . . . . . 5-230  
Courts, p. 333; Railroad Corporation, p. 589; Receiver, p. 593.
- ERIE RAILROAD Co., BOSTON HARTFORD & .** . . . . . 5-232, 233  
Stranger, p. 644.
- ERIE RAILROAD Co., BOSTON, HARTFORD & .** . . . . . 6-210, 222  
Adjudication, p. 146.
- ERIE RAILROAD Co. et al., BOSTON, HARTFORD & SWEATT v.** . . . . . 5-234  
Crit., p. 36; Constitutionality, p. 296; Construction, p. 298; Courts, p. 327; Practice, p. 552.
- ERWIN & HARDEE.** . . . . . 3-580  
Distribution, p. 374; Lien, p. 483.
- ESS & CLARENDON.** . . . . . 7-133  
Adjudication, p. 188; Commercial Paper, p. 287; Partnership, p. 528.
- ESTATE OF ALFRED WILD, RECEIVER OF OCEAN NAT. BANK v.** . . . . . 10-568  
National Bank, p. 510; Usury, p. 669.
- ESTATE OF STUYVESANT BANK, SIXPENNY SAVINGS BANK v.** . . . . . 10-399  
Priority, p. 565.
- EVANS, T. C.** . . . . . 3-261  
Crit., p. 82; Attorney and Counsel, p. 263; Construction, p. 298.
- EVANS et al., THE CHARTERED BANK OF INDIA v.** . . . . . 4-186  
Assets, p. 221; Fraud, p. 426; Secured Creditor, p. 620.
- EVERETT, MEADOR v.** . . . . . 10-421  
Assignment, p. 251; Lease, p. 477.
- EVERITT, JARED.** . . . . . 9-90  
Amendment, p. 200; Constitutionality, p. 297; Exemption, p. 401; Homestead, p. 436.
- EXUM, COGDELL v.** . . . . . 10-327  
Action, p. 182; Amendment, p. 199; Assignee, p. 238; Courts, p. 329; Limitation, p. 489.
- FALLON.** . . . . . 2-277  
Adjudication, p. 190; Debt, p. 341; Proceedings in Bankruptcy, p. 568.
- FARISH .** . . . . . 2-168  
Exemption, p. 404.
- FARRELL .** . . . . . 5-125  
Adjudication, p. 185; Discharge, p. 365; Proceedings in Bankruptcy, p. 569.
- FARRIN v. CRAWFORD et al.** . . . . . 2-602  
Acts of Bankruptcy, p. 175; *Idem*, p. 177; Assignment, p. 254; Preference, p. 557.
- FAXTON, MAXWELL v.** . . . . . 4-210  
See Maxwell v. Faxton, *post*.
- FAY, G. P. & B. W.** . . . . . 3-660  
Witness, p. 681.
- FEELEY.** . . . . . 3-66  
Exemption, p. 401; *Idem*, 402; *Idem*, 404.
- FEENY.** . . . . . 4-233  
Contempt, p. 301; Damages, p. 339.
- FEES OF REGISTERS .** . . . . . 10-141  
Costs and Fees, p. 318.
- FRINBURG, STEINBOCK & PESSLS.** . . . . . 2-425

- Attorney and Counsel, p. 262; Examination, p. 387.
- FENDLY**.....10-251  
Agent, p. 197; Attorney and Counsel, p. 260; Courts, p. 326; Injunction, p. 445; Jurisdiction, p. 466; Pleading, p. 542; Practice, p. 554; Verification, p. 670.
- FENTON, KENYON &**.....6-238  
Acts of Bankruptcy, p. 181; Commercial Paper, p. 285; Wages, p. 678.
- FERGUSON, ALLEN & Co. v**.....9-481  
PAYMENT, p. 511.
- FERGUSON, COOKINGHAM, ETC., v**....4-635  
Fraud, p. 426; Intent, p. 451.
- FERGUSON et ux. v. PECKHAM et al.**..6-569  
Adverse Claimant, p. 194; Assignee, p. 240.
- FERNBERG et al.**.....2-353  
Assignee, p. 228.
- FILLEY, WRIGHT v**.....4-611  
Procuring and Suffering to be Taken, p. 570.
- FINDLAY, in re**.....9-83  
Answer, p. 207; Practice, p. 554; Verification, p. 670.
- FINN**.....8-525  
Advice of Counsel, p. 195; Attorney and Counsel, p. 261; Discharge, p. 358.
- FIREMEN'S INSURANCE COMPANY**...8-123  
Assignee, p. 246; Commencement of Suit, p. 283; Expunging Proof, p. 404; Insurance, p. 449; Practice, p. 451; Proof of Debt, p. 574; *Idem*, p. 575; *Idem*, p. 577; Waiver, p. 674.
- FIRST NATIONAL BANK OF TROY v. COOPER et al.**.....9-529  
Appeal, p. 211; Courts, p. 328; Proof of Debt, p. 575.
- FIRST NATIONAL BANK OF HASTINGS, HAWKINS, ETC., v**.....2-338  
Chattel Mortgage, p. 277; Mortgage, p. 502; Practice, p. 551.
- FIRST NATIONAL BANK OF JANESVILLE, BURFEE v**.....9-314  
Answer, p. 208; Fraud, p. 427; Judgment, p. 460; Mortgage, p. 500; Pleading, p. 540; *Idem*, p. 542.
- FISHER v. HENDERSON et al.**.....8-175  
Assignee, p. 229; Homestead, p. 433.
- FITCH et al., v. MCGEE, Ex parte SANGER**.....2-531  
Acts of Bankruptcy, p. 176; Judgment, p. 457; Preference, p. 561.
- FLORIDA, ATLANTIC & GULF CENTRAL R. R. COMPANY, RANKIN & PULAM v**.....1-647  
Acts of Bankruptcy, p. 178; *Idem*, p. 179; Corporation, p. 306; Procuring and Suffering to be Taken, p. 570; Provable Debt, p. 585; War, p. 675.
- FOGERTY & GERITY**.....4-451  
Adjudication, p. 190; Jurisdiction, p. 464; Residence, p. 609.
- FOREST**.....9-278  
Adjudication, p. 188; New Trial, p. 511.
- FORSAITH, ASSIGNEE, v. MERRITT**...3-48  
Partnership, p. 527; Preference, p. 563.
- FORSYTH & MURTHA**.....7-174  
Acts of Bankruptcy, p. 179; Execution, p. 399; Fraud, p. 426; Partnership, p. 524; Procuring and Suffering to be Taken, p. 571; Provable Debt, p. 581; Reasonable Cause, p. 590.
- FORSYTH v. WOODS**.....5-78  
Debt, p. 341; Joint Liability, p. 455; Partnership, p. 528.
- FORTUNE**.....2-662  
Attachment, p. 258; Costs and Fees, p. 319; Lien, p. 480.
- FORTUNE**.....3-313  
Proof of Debt, p. 578.
- FOSTER, B. N.**.....2-232  
Assignment, p. 255; Pre-existing Debt, p. 554; Preference, p. 563.
- FOSTER, CATLIN, ETC., v**.....3-510  
Crit., p. 31; Mutual Debts, p. 509; Set-off, p. 629.
- FOSTER, ASSIGNEE, v. HACKLEY & SONS**.....2-406  
Crit., p. 32; Action, p. 182; Fraud, p. 421.
- FOSTER et al., CLIFTON et al. v**.....3-656  
Courts, p. 331.
- FOSTER et al. v. AMES et al.**.....2-455  
Assignee, p. 244; *Idem*, p. 245; Chattel Mortgage, p. 279; Courts, p. 325; Encumbered Property, p. 377; Equity, p. 382; Finishing Chattels, p. 410; Mortgage, p. 507; Sales, p. 612.
- FOSTER & PRATT**.....3-236  
Construction, p. 298; Partnership, p. 521.
- FOSTER, WM., v. RHODES**.....10-523  
Lien, p. 485; Mortgage, p. 504; *Idem*, p. 507; Rent, p. 607.

- FOURTH NATIONAL BANK CHICAGO v. CITY NATIONAL BANK OF GRAND RAPIDS, MICH.**..... 10-44  
Assignee, p. 238; Cheque, p. 279; Lien, p. 480; Title, p. 660.
- FOWLER, JAMES L., *Ex parte* O'NEIL.**1-680  
Adjudication, p. 189; *Idem*, 190; Concealment, p. 291; Discontinuance of Proceedings, p. 367; Partnership, p. 527.
- FOWLER, JAMES L., *Ex parte* O'NEIL.**1-677  
Judgment, p. 461; Proof of Debt, p. 574.
- FOWLER, WITHROW v.**.....7-339  
Transfer, p. 662.
- FOX v. ECKSTEIN** .....4-373  
Acts of Bankruptcy, p. 175; Adjudication, p. 187; Concealment, p. 293; Sales, p. 613.
- FRANCIS & BUCHANAN**.....7-359  
Evidence, p. 385; Partnership, p. 526.
- FRANCKE & FRANCKE**.....10-438  
Amendment, p. 201; Discharge, p. 357; Fifty per Cent., p. 409.
- FRANK**.....5-194  
Assignee, p. 225; Composition, p. 289; Fraud, p. 428; Proof of Debt, p. 576; Note, p. 671.
- FRANTZ, E., MAURER, ETC., v.**.....4-431  
Payment, p. 532; Preference, p. 558.
- FRAZIER & FRY v. McDONALD**.....8-237  
Death of Bankrupt, p. 289; Proceedings in Bankruptcy, p. 569.
- FREAR**.....1-660  
Assets, p. 222; Partnership, p. 521; *Idem*, p. 527; Provable Debt, p. 584.
- FREDENBURG** .. . . .1-268  
Crit., p. 32; Attorney and Counsel, p. 262; Waiver, p. 673; Witness, p. 679.
- FREEL *et al.*, HOYT *et al.* v.**.....4-182
- FREELANDER & GERSON v. HOLLOWMAN *et al.***..... 9-381  
Assignee, p. 240; Fraud, p. 428; Limitation, p. 489.
- FREEMAN**.....4-64  
Transfer, p. 661.
- FREDERICK**.....3-465  
Crit., p. 32; Assets, p. 220; *Idem*, p. 221; Fifty per Cent., p. 408.
- FRISBEE, VOORHEES v.**.....8-152  
Assignee, p. 238; Courts, p. 832.
- FRITCHERY & THOMAS, SHAFER v.**...4-548  
Bonus, p. 270; Fraud, p. 422; Insolvency, p. 447; Provable Debt, p. 583; Suspension of Payment, p. 654.
- FRIZELLE, S. F.**.....5-122  
Foreclosure, p. 411; Mortgage, p. 504; Parties, p. 518; Practice, p. 548.
- FRIZELLE, S. F. & C. S.**.....5-119  
Discharge, p. 355; Examination, p. 394.
- FROST, BINGHAM v.**.....6-130  
Conveyance, p. 304; Mortgage, p. 501.
- FROST & WESTFALL**.....3-736  
Husband and Wife, p. 436; Provable Debt, p. 586.
- FRY, ZAHM v.** .....9-546  
Judgment, p. 462; Purchaser, p. 548; Title, p. 660.
- FULLER**.....4-116  
Confession of Judgment, p. 293; Courts, p. 333; Interest, p. 452; Judgment, p. 460; Jurisdiction, p. 468; Stay of Proceedings, p. 640; Usury, p. 668.
- GAINES**.....2-525  
Assignee, p. 246; Exemption, p. 401; Practice, p. 549.
- GALLINGER**.....4-729  
Amendment, p. 204.
- GALLISON *et al.***.....5-353  
Crit., p. 32; Discharge, p. 360; Judgment, p. 456; Opposing Discharge, p. 515; Practice, p. 553.
- GARDNER, BEATTIE, ETC., v.**.....4-328  
Judgment, p. 461; Procuring and Suffering to be Taken, p. 570; Suffering Property to be Taken, p. 646.
- GARDNER v. COOK** .....7-346  
Crit., p. 32; Assignee, p. 244; Costs and Fees, p. 312; Custody of Property, p. 338; Provable Debt, p. 582.
- GARRISON, E.**.....7-287  
Books of Account, p. 272; Discharge, p. 353.
- GARRISON, ETC., v. MARKLEY**.....7-246  
Discontinuance of Proceedings, p. 368; Discovery, p. 370; Equity, p. 381; Jurisdiction, p. 466; Remedy, p. 603.
- GAY**.....2-358  
Crit., p. 33; Books of Account, p. 271; Discharge, p. 363; Insolvency, p. 446; Ordinary Course of Business, p. 517; Preference, p. 556.
- GAY, PERKINS v.**.....3-772  
Discharge, p. 358; Impeaching Discharge, p. 439.

- GEARY, BORDEN &.....5-128  
Fifty per Cent., p. 409.
- GEARY, UNITED STATES v.....4-534  
Bail, p. 264 ; Misdemeanor, p. 498.
- GEBHARDT.....3-268  
Answer, p. 207.
- GENTRY, BOLANDER v.....2-655  
Assignee, p. 229 ; Attachment, p. 259 ;  
Claim and Delivery, p. 281 ; Pleading, p.  
538 ; Sales, p. 612 ; Title, p. 658.
- GERMAN SAVINGS INSTITUTION, LEE,  
ETC., v.....3-318  
Foreclosure, p. 211 ; Preference, p.  
559 ; Secured Creditor, p. 625.
- GETTLESTON.....1-604
- GHIRARDELLI.....4-164  
Debt, p. 342 ; Stay of Proceedings, p.  
638 ; *Idem*, p. 640.
- GIDDINGS v. DODD, BROWN & Co....4-657  
Intent, p. 451 ; Procuring and Suffer-  
ing to be Taken, p. 570.
- GILBERT, J. F.....3-152  
Examination, p. 388 ; Wife of Bank-  
rupt, p. 677.
- GILBERT v. PRIEST.....8-159  
Action, p. 182 ; Assignee, p. 238 ;  
Courts, p. 329 ; Fraud, p. 417.
- GILLESPIE v. MCKNIGHT.....3-468
- GLASER, L.....1-241, 336  
Arrest, p. 215 ; Courts, p. 325 ; *Idem*,  
p. 328 ; Discharge, p. 358.
- GLASER, S.....2-398  
Attachment, p. 256 ; Contempt, p. 301 ;  
Witness, p. 680.
- GLIDDEN *et al.*, MERRITT v.....5-157  
Final Judgment, p. 410 ; Judgment,  
p. 458 ; Pleading, p. 538 ; Stay of Pro-  
ceedings, p. 637.
- GODDARD v. WEAVER.....6-440  
Crit., p. 33 ; Adjudication, p. 192 ;  
Foreclosure, p. 411 ; Lien, p. 483.
- GODFREY, STOWE *ex parte*.....6-429  
Mortgage, p. 508 ; Preference, p. 560 ;  
Secured Creditor, p. 621.
- GOEDDE & Co.....6-295  
Creditors, p. 336 ; Distribution, p. 374.
- GOLSON *et al.* v. NEIHOFF, *et al.*.....5-56  
Confession of Judgment, p. 293 ; In-  
solvency, p. 447 ; Judgment, p. 457 ;  
Knowledge of Insolvency, p. 475 ; Pre-  
ference, p. 562.
- GOODALL v. TUTTLE.....7-193  
Crit., p. 33 ; Assignee, p. 237 ; Con-  
struction, p. 299 ; Courts, p. 329 ; Differ-  
ent Districts, p. 348 ; Interpretation, p.  
453 ; Jurisdiction, p. 466 ; *Idem*, p.  
472.
- GOODFELLOW.....3-453  
Adjudication, p. 191 ; Aliens, p. 193 ;  
Residence, p. 609.
- GOODMAN.....8-380  
Acts of Bankruptcy, p. 173 ; Contract  
p. 304 ; Married Woman, p. 492.
- GOODRIDGE.....2-324  
Concealment, p. 291 ; Evidence, p.  
383 ; Specification, p. 635.
- GOODWIN.....3-417  
Assignee, p. 249.
- GOODWIN v. SHARKEY.....3-558  
Arrest, p. 215 ; Fraud, p. 417.
- GOLDSCHMIDT.....3-165  
Acts of Bankruptcy, p. 174 ; Assign-  
ment, p. 252 ; Contemplation of Bank-  
ruptcy, p. 300 ; Intent, p. 450.
- GORDON, McMILLAN & Co. v. SCOTT &  
ALLEN.....2-86  
Costs and Fees, 314 ; *Idem*, p. 317 ;  
Mileage, p. 497 ; Service of Papers, p.  
627 ; Subpoena, p. 644.
- GRADY.....3-227  
Assignee, p. 239.
- GRAHAM, W. H.....5-155  
Discharge, p. 356 ; Fifty per Cent., p.  
409.
- GRAHAM, BENJAMIN, ETC., v.....4-391  
Practice, p. 552.
- GRAHAM & Co. v. STARK *et al.*.....3-357  
Crit., p. 33 ; Agent, p. 196 ; Husband  
and Wife, p. 436 ; Preference, p. 558 ;  
Secured Creditor, p. 625.
- GRANGER & SABIN.....8-30  
Assignee, p. 233.
- GRANT.....2-106  
Assignee, p. 224.
- GRAVES.....1-237  
Assignee, p. 241 ; Disputed Title, p.  
371 ; Perishable Property, p. 532 ; Prac-  
tice, p. 552.
- GRAVES, ANDREW v.....4-652  
Judgment, p. 458.
- GRAVES, LAWRENCE v.....5-279  
Depositions, p. 347 ; Transfer, p. 662.
- GRAVES *et al.* v. WINTER *et al.*, ETC...9-357  
Bankrupt Act, p. 267 ; Executors, p.  
399.
- GRAY *et al.*, COLLINS v.....4-631  
Construction, p. 298 ; Four and Six  
Months, p. 413.

- GRAY v. ROLLO, ASSIGNEE.....9-337  
Joint Liability, p. 455 ; Mutual Debts, p. 510 ; Set-off, p. 630.
- GREELY, ECKFORT & PETRING v.....6-433  
Acts of Bankruptcy, p. 178 ; Assignment, p. 255 ; Composition, p. 290.
- GREENFIELD.....2-298  
Application for Discharge, p. 213 ; Discharge, p. 350.
- GREENFIELD.....2-311  
Crit., p. 33 ; Application for Discharge, p. 213 ; Discharge, p. 350.
- GREENFIELD *et al.*, GUNTHER *et al.* v.8-730  
Assignee, p. 242 ; Parties, p. 518.
- GREFE.....2-329  
Specification, p. 635.
- GREGG.....4-456  
Fraud, p. 425 ; *Idem*, p. 428 ; Intent, p. 451 ; Payment, p. 531 ; Preference, p. 558.
- GREGG, T. B.....3-529  
Advances, p. 194 ; Assignee, p. 233.
- GREGORY & Co., STRANAHAN, ETC., v.....4-427  
Insolvency, p. 447.
- GRIFFIN, W.....1-371  
Adjournment, p. 185 ; Costs and Fees, p. 320 ; Wife of Bankrupt, p. 676 ; Witness, p. 680.
- GRIFFIN, J. H.....2-254  
Exemption, p. 404.
- GRIFFIN, RYAN & .....6-235  
Sales, 614.
- GRIFFITHS.....10-456  
Amendment, p. 202 ; Discharge, p. 357.
- GRIFFITHS, J. W.....3-731  
Crit., p. 33 ; Chattel Mortgage, p. 277 ; Mortgage, p. 505.
- GRINNELL, G. B. & Co.....9-29  
Pledge, p. 544 ; Proof of Debt, p. 577 ; Sales, p. 616 ; Secured Creditor, p. 624 ; *Idem*, p. 625 ; Sheriff, p. 633.
- GRINNELL, G. B. & Co.....9-137  
Pledge, p. 544 ; Practice, p. 553 ; Secured Creditor, p. 625 ; Stock, p. 642.
- GRITMANN, MORSS v.....10-132  
Appeal, p. 208.
- GROVER & BAKER v. CLINTON.....8-312  
Arrest, p. 215 ; Discharge, p. 355 ; Fiduciary Debt, p. 407.
- GROW v. BALLARD & HALL.....2-194  
Assignee, 235 ; Exemption, p. 401.
- GUNKE.....4-92  
Death of Bankrupt, p. 339 ; Discharge, p. 354.
- GUNN v. BARRY.....8-1  
Crit., p. 33 ; Homestead, p. 434 ; Mandamus, p. 491 ; Remedy, p. 604.
- GUNN, WOODFOLK v.....10-526  
Courts, p. 332 ; Practice, p. 550.
- GUNTHER *et al.* v. GREENFIELD *et al.*8-730  
Assignee, p. 242 ; Parties, p. 518.
- HAAKE.....7-61  
Crit., p. 33 ; Adjudication, p. 191 ; Advances, p. 193 ; Debt, p. 341 ; Homestead, p. 433 ; Interest, p. 452 ; Mortgage, p. 508 ; Preferred Creditor, p. 564 ; Secured Creditor, p. 622.
- HAAS & SAMPSON, *In re.*....8-189  
Assignee, p. 227
- HACKLEY & SONS, FOSTER, ETC., v....2-406  
Crit., p. 32 ; Action, p. 182 ; Fraud, p. 421.
- HAER & BROTHER.....1-547  
Assignee, p. 245 ; Exemption, p. 403 ; Partnership, p. 523.
- HAER & BROTHER.....1-586  
Execution, p. 396 ; Injunction, p. 443.
- HAGAN, EDWARD.....10-383  
Claim, p. 280 ; Interest, p. 453.
- HALE, COXE v.....8-562  
Assignee, p. 248 ; Execution, p. 397 ; Procuring and Suffering to be Taken, p. 571.
- HALL.....2-192  
Meeting of Creditors, 495 ; Notice, p. 513.
- HALL, JACK.....9-366  
Homestead, p. 435.
- HALL v. ALLEN.....9-6  
Appeal, p. 211 ; Courts, p. 328 ; Summary Proceedings, p. 648.
- HALL v. SCOVELL.....10-296  
Assignee, p. 247 ; Bargain and Sale, p. 269 ; Purchaser, p. 588 ; Rent, p. 607 ; Sales, p. 617 ; Title, p. 660.
- HALL v. WAGER & FALES.....5-181  
Bankrupt Act, p. 267 ; Contemplation of Bankruptcy, p. 300 ; Fraud, p. 427 ; Insolvency, p. 447 ; Mortgage, p. 500 ; Preference, p. 559 ; Presumption of Law, p. 564.
- HALLIBURTON v. CARTER.....10-359  
Fiduciary Debt, p. 407 ; Guardian, p. 432 ; Surety, p. 649.

- HALEY.....2-36  
Commission, p. 287; Depositions, p. 346; Proof of Debt, p. 573; Residence, p. 608.
- HAMAN *et al.* LENIHAN *v.*.....8-557  
Assignee, p. 281; *Idem*, p. 282; Assignment, p. 252; Courts, p. 332; Sale, p. 616; Setting aside Conveyance, p. 631.
- HAMBRIGHT .....2-498  
Costs and Fees, p. 316; Lien, p. 480.
- HAMLIN *v.* PETTIBONE.....10-173  
Amendment, p. 203; Knowledge of Insolvency, p. 475; Purchaser, p. 587.
- HAMMOND *v.* COOLIDGE.....8-273  
Assignee, p. 241; Books of Account, p. 271; Consignment, p. 296.
- HANNA.....4-411  
Injunction, p. 444; Sales, p. 614.
- HANNA.....5-292  
Practice, p. 553; Sales, p. 614.
- HANNA.....7-502  
Creditors, p. 337; Secured Creditor, p. 626.
- HANSBROUGH, UPTON *v.*.....10-369  
Assessment on Stock, p. 218; Assets, p. 221; Bankrupt Court, p. 269; Corporation, p. 310; *Idem*, p. 312; Representations, p. 607; Stockholder, p. 644.
- HANSEN .....2-211  
Discharge, p. 361; *Idem*, p. 366; Specification, p. 634.
- HARDEN .....1-395  
Acknowledgment, p. 173; Limitation, p. 489; Provable Debt, p. 585; Schedules, p. 618.
- HARDING, BOWMAN *v.*.....4-20  
Assignment, p. 252; Attachment, p. 258; Commencement of Proceedings, p. 282; Four and Six Months, p. 413.
- HARDING *et al.*, MCKINSEY & BROWN *v.*.....4-38  
Insanity, p. 446; Usury, p. 668.
- HARDY *et al.* *v.* CLARK & BININGER..3-385  
Crit., p. 33; Legal Process, p. 477.
- HARDY, BLAKE & CO. *v.* BININGER & Co.....4-262  
Acts of Bankruptcy, p. 180; Fraud, p. 429; Legal Process, p. 477; Suffering Property to be Taken, p. 646.
- HAVENS.....1-485
- HARLAN, HORTER *et al.* *v.*.....7-238  
Courts, p. 330; Embezzlement, p. 377; Fraud, p. 416.
- HARLEY, MOORE & BROTHER *v.*.....4-242  
Petition, p. 536; Practice, p. 553; Verification, p. 669.
- HARLEY, OREM & Co. *v.* .....3-263  
Pleading, p. 538; *Idem*, p. 543.
- HARLOW.....10-280  
Lien, p. 487; Pledge, p. 544; Waiver, p. 684.
- HARMER, PIPER *v.*.....5-252  
Assignee, p. 287; Courts, p. 331; Jurisdiction, p. 472; Limitation, p. 490.
- HARPER & ATHERTON, MAY *v.*.....4-478  
Amendment, p. 203.
- HARRELL, BEALL *v.*.....7-400  
Crit., p. 30; Assignee, p. 230; Purchaser, p. 588; Sheriff, p. 663.
- HARRELL *v.* BEALL, ASSIGNEE.....9-49  
Assets, p. 221; Fraud, p. 424; Purchaser, p. 588; Title, p. 660.
- HARRIS .....2-103  
Opposing Discharge, p. 514.
- HARRIS, MCGREADY *v.*.....9-135  
Commencement of Proceedings, p. 282; Deed, p. 343.
- HARRISON *v.* McLAREN.....10-244  
Advances, p. 193; Distribution, p. 372; Preference, p. 559; Transfer, p. 663.
- HART, BENJAMIN, ETC., *v.*.....4-408  
Appeal, p. 208; Bond, p. 270; Execution, p. 398.
- HARTEL .....7-559  
Commercial Paper, p. 287; Husband and Wife, p. 438; Secured Creditor, p. 622.
- HARTHILL.....4-393  
Claim and Delivery, p. 281; Marshal, p. 493; Property unwarrantably Taken, p. 579.
- HARTHORN.....4-103  
Minor, p. 497; Priority, p. 566; Wages, p. 672.
- HARTOUGH *et al.*.....3-423  
Crit., p. 33; Partnership, p. 523.
- HARVEY *v.* CRANE.....5-218  
Crit., p. 33; Chattel Mortgage, p. 278; Lien, p. 486; Mortgage, p. 503; *Idem*, p. 506; Preference, p. 560.
- HASBROUCK .....1-75  
Surrender, p. 650.
- HASKELL.....4-558  
Certifying Questions, p. 275.
- HASKELL *v.* INGALLS.....5-205  
Four and Six Months, p. 414; Injunction, p. 441; Stay of Proceedings, p. 639.



- HATCHER**.....1-390  
Adjudication, p. 190; Discontinuance of Proceedings, p. 367.
- HAUGHEY, ASSIGNEE OF REEDER, v. ALBIN**.....2-399  
Preference, p. 561.
- HAUGHTON**.....1-460  
Amendment, p. 204; Pleading, p. 537.
- HAVENS**.....1-485  
Assignee, p. 223.
- HAWKEYE SMELTING COMPANY**.....8-385  
Construction, p. 299; Denial of Bankruptcy, p. 346; Jury Trial, p. 474; Order, p. 516; Pleading, p. 538; *Idem*, p. 541; *Idem*, p. 542; *Idem*, p. 544; Verification, p. 670; Assignment, p. 251.
- HAWKINS, et al.**.....2-378  
State Insolvent Laws, p. 636.
- HAWKINS, ASSIGNEE OF M. L. & M. D. SPROAT, v. FIRST NATIONAL BANK, HASTINGS**.....2-338  
Chattel Mortgage, p. 277; Mortgage, p. 502; Practice, p. 551.
- HAY**.....7-344  
Assignee, p. 245; Exemption, p. 402; Priority, p. 565.
- HAYDEN**.....7-192
- HAYNES**.....2-227  
Assignee, p. 225; Distribution, p. 374.
- HAYNES, CHRISTMAN v.**.....8-528  
Assignee, p. 234; Executor, p. 399; Procuring and Suffering to be Taken, p. 571.
- HAZELTON**.....2-31  
Arrest, p. 216; *Idem*, p. 217; Execution, p. 396; Injunction, p. 443.
- HEANEY, MARKSON & SPAULDING versus**.....4-511  
Crit., p. 84; Courts, p. 321; *Idem*, p. 323; Enjoining Proceedings in State Court, p. 379.
- HEATH & HUGHES**.....7-448  
Discharge, p. 355; Examination, p. 394.
- HEATON & HUBBARD, MARCH & COMPANY v.**.....2-180  
Bankrupt, p. 265; Fiduciary Debt, p. 406.
- HEFFRON**.....10-213  
Amendment, p. 203; Creditors, p. 337; Discontinuance of Proceedings, p. 370; Petition, p. 534.
- HEINSHEIMER et al. versus SHEA & BOYLE**.....3-187  
Burden of Proof, p. 273; Commercial Paper, p. 285; Fraud, p. 429.
- HEIRSCHBERG**.....1-642  
Crit., p. 33; Attorney and Counsel, p. 263; Costs and Fees, p. 314.
- HELLER**.....5-46  
Amendment, p. 206; Schedules, p. 619
- HENDERSON et al., FISHER v.**.....8-175  
Assignee, p. 229; Homestead, p. 483.
- HENKEL**.....2-546  
Creditors, p. 335; Fraud, p. 421; Homestead, p. 434.
- HENNOCKSBURG & BLOCK**.....7-37  
Commencement of Proceedings, p. 283; Provable Debt, p. 585; *Idem*, p. 586; Time, p. 657; Torts, p. 660.
- HERCULES MUTUAL LIFE ASSURANCE SOCIETY OF THE UNITED STATES**.....6-338  
Amendment, p. 199; Commercial Paper, p. 284; *Idem*, p. 286; Corporation, p. 312; Suspension of Payment, p. 654.
- HERNDON v. HOWARD**.....4-212  
Assignee, p. 239.
- HERRICK**.....7-341  
Discharge, p. 359.
- HERRMAN & HERRMAN**.....3-618  
Assignee, p. 225; Proof of Debt, p. 576.
- HERRMAN & HERRMAN**.....3-649  
Meeting of Creditors, p. 496; Proof of Debt, p. 576.
- HERRON, UNITED STATES v.**.....9-535
- HERSHMAN**.....7-604  
Amendment, p. 199; Discharge, p. 352.
- HESTER**.....5-285  
Assignee, p. 232; Dower, p. 376; Exemption, p. 404; Widow, p. 676.
- HEYDETTE in re**.....8-338  
Denial of Bankruptcy, p. 346; Jury Trial, p. 474; Pleading, p. 541; *Idem*, p. 544.
- HEYS**.....1-21  
Foreign Creditors, p. 412; Meeting of Creditors, p. 495; Notice, p. 512.
- HIGH & HUBBARD**.....3-192  
Jurisdiction, p. 468; Lien, p. 484; Provable Debt, p. 504; Secured Creditor, Surrender, p. 650.
- HIGHTOWER & BUTLER, BENNETT v.**.....10-157  
Amendment, p. 201; *Idem*, p. 202.
- HILL**.....2-140  
Courts, p. 333; Injunction, p. 443; Stay of Proceedings, p. 641.
- HILL, W. D.**.....1-16

- Adjournment, p. 184; Amendment, p. 206; *Idem*, p. 207; Assignee, p. 224; Attorney and Counsel, p. 260; Certificate, p. 274; Creditors, p. 334; Inventory, p. 454; Marshal, p. 492; Name, p. 510; Notice, p. 511; Pleading, p. 543; *Idem*, p. 544; Schedules, p. 617; Variance, p. 669.
- HILL, W. D.....1-275  
Specifications, p. 634.
- HILL, W. D.....1-431  
Discharge, p. 353.
- HILL, JOSEPH M.....10-133  
Amendment, p. 201; Jurisdiction, p. 469.
- HILL, ZEIBER, *v.*.....8-239  
Cost and Fees, p. 319; Sheriff, p. 632.
- HINDS *et al.*.....8-351  
Assets, p. 221; Judgment, p. 458; Lien, p. 483.
- HINES *et al.*, STEWART *v.*.....6-416  
Assignee, p. 238; Courts, p. 331; Lien, p. 479; Order, p. 515; Partnership, p. 526; Service of Papers, p. 628.
- HIRSCH.....2-3  
Attachment, p. 256; Contempt, p. 301; Courts, p. 326; Discontinuance of Proceedings, p. 367; Injunction, p. 445.
- HITCHCOCK *v.* ROLLO.....4-690  
Mutual Debts, p. 509; Set-off, p. 629.
- HITCHINGS.....4-384  
Fixtures, p. 410; Marshal, p. 494; Sales, p. 613.
- HQAG *et al.*, SAWYER *et al. v.*.....9-145  
Corporation, p. 311; Set-off, p. 629; Stockholder, p. 643.
- HOFFMAN, CATLIN & Co. *v.*.....9-342  
Conveyance, p. 304; Evidence, p. 386; Intent, p. 442; Judgment, p. 460; *Idem*, p. 461; Lien, p. 481; Notice, p. 513; Procuring and Suffering to be Taken, p. 572; Secured Creditor, p. 622.
- HOGUE, LOCKETT *v.*.....9-167  
Mortgage, p. 505; Power of Attorney, p. 546; Sale, p. 616; Trustee, p. 666.
- HOGUET *et al.*, KOHLSAAT *v.*.....5-159  
Assignee, p. 233; Preference, p. 555; Procuring and Suffering to be Taken, p. 570.
- HOLLAND, *In re.*.....8-190  
Separate Claims, p. 627; Surrender, p. 652.
- HOLLEMAN *v.* DEWEY.....7-269  
Confederate Money, p. 292; Payment, p. 530; War, p. 675.
- HOLLENHADE.....2-651  
Discharge, p. 351.
- HOLLIS & KENNEY.....3-310  
Commercial Paper, p. 284; Suspension of Payment, p. 653.
- HOLLOWMAN *et al.*, FREELANDER & GERSON *v.*.....9-331  
Assignee, p. 240; Fraud, p. 428; Limitation, p. 489.
- HOLT.....3-241  
Examination, p. 392.
- HOLYOKE *v.* ADAMS.....10-270  
Attachment, p. 257; Surety, p. 649.
- HOOD *et al. v.* KARPER *et al.*.....5-358  
Confession of Judgment, p. 294; Execution, p. 399; Four and Six Months, p. 414; Intent, p. 451; Power of Attorney, p. 546; Secured Creditor, p. 621; Transfer, p. 662.
- HOPE MINING Co.....7-598  
Attorney and Counsel, p. 264; Cost and Fees, p. 314.
- HOPPOCK *v.* BROCK.....2-7  
Crit., p. 81; Legal Process, 477; Supplementary Proceedings, p. 649.
- HOPPOCK *et al.*, HYSLOP *v.*.....6-552  
Service of Papers, p. 628; Subpoena, p. 645.
- HOPPOCK *et al.*, HYSLOP *v.*.....6-557  
Service of Papers, p. 628; Subpoena, p. 645.
- HOWELL, HUNT &.....5-433  
Fraud, p. 423; Judgment, p. 460; Surrender, p. 651.
- HORTER *et al. v.* HARLAN.....7-238  
Courts, p. 330; Embezzlement, p. 377; Fraud, p. 416.
- HOSIE.....7-601  
Bankrupt Act, p. 268; Trust, p. 664.
- HOTCHKISS, *In re.*.....9-488  
Joint Liability, p. 455; Rent, p. 606.
- HOTCHKISS, MALTBIE *v.*.....5-485  
Conveyance, p. 305; Jurisdiction, p. 468.
- HOUGHTON.....10-337  
Creditors, p. 335; Discharge, p. 361; Intervention, p. 454.
- HOUSBERGER & ZIBELIN.....2-92  
Attachment, p. 258; Cost and Fees, p. 319; Lien, p. 480.
- HOUSE *et al.*, NORTH *v.*.....6-365  
Assignment, p. 255.
- HOVEY *v.* HOME INSURANCE Co.....10-224

- Debt, p. 342 ; Purchase of Claims, p. 587 ; Set-off, p. 630.
- HOWARD, COLE & Co.....4-571  
Distribution, p. 375 ; Endorser, p. 378 ; Joint Liability, p. 455 ; Secured Creditor, p. 622.
- HOWARD, COLE & Co.....6-372  
Claim, p. 279.
- HOWARD, HERNDON *v.*.....4-212  
Assignee, p. 287.
- HOWARD *et al.*, MASTERSON *v.*.....5-130  
Appeal, p. 209 ; Parties, p. 518.
- HOWE, WAY *v.*.....4-677  
Impeaching Discharge, p. 439.
- HOWES & MACY.....9-423  
Custody of Property, p. 338 ; Marshal, p. 493 ; Surrender, p. 652.
- HOWLAND.....2-357  
Acts of Bankruptcy, p. 173 ; Amendment, p. 204 ; Married Woman, p. 491.
- HOYET, DUSENBURY *v.*.....10-313  
Debt, p. 341 ; Discharge, p. 363 ; New Promise, p. 511 ; Pleading, p. 542.
- HOYT.....8-55  
Surplus, p. 656.
- HOYT *et al. v. FREEL et al.*.....4-132
- HUBBARD *et al. v. ALLAIRE WORKS.*...4-623  
Assignee, p. 235.
- HUBBARD, EDWARD, JR.....1-679  
Proof of Debt, p. 578.
- HUBBEL, C. C. & E. A. Chapel, *in re.* 9-523  
Assignee, p. 243.
- HUDSON *et al. v. BINGHAM et al.*.....8-494  
Discharge, p. 363 ; Equity, p. 381 ; Evidence, p. 386.
- HUGHES.....1-226  
Adjournment, p. 184 ; Assignee, p. 246 ; Discharge, p. 364.
- HUGHES *v. IRVING.*.....2-62  
Equity, p. 380 ; Execution, p. 398 ; Injunction, p. 445 ; Practice, p. 550 ; Summary Proceedings, p. 647.
- HUMBLE & Co. *v. CARSON.*.....6-84  
Discharge, p. 352.
- HUMMITSH.....2-12  
Assets, p. 219 ; False Swearing, p. 405 ; Schedules, p. 618.
- HUNT, C.....5-493  
Homestead, p. 436 ; Injunction, p. 443.
- HUNT, J. D.....2-539  
Congress, p. 294 ; Custody of Property, p. 338 ; Discharge, p. 365 ; Ordinary Course of Business, p. 516 ; Sales, p. 612 ; Summary Proceedings, p. 647.
- HUNT & HORNELL.....5-433  
Fraud, p. 423 ; Judgment, p. 460 ; Surrender, p. 651.
- HUNT, MCGRATH &.....5-254  
Landlord, p. 476 ; Rent, p. 606.
- HUNT, SECOND NAT. BANK OF LEAVENWORTH *v.*.....4-616  
Crit., p. 35 ; Agreement, p. 197 ; Chattel Mortgage, p. 277 ; Lien, p. 486 ; Transfer, p. 662.
- HUNT *et al. v. TAYLOR et al.*.....4-683  
Discharge, p. 355 ; Drawee, p. 376 ; Limitation, p. 490.
- HUNT *v. TILLINGHAST & Co. v. POOKE & STEERE.*.....5-161  
Crit., p. 33 ; Adjudication, p. 187 ; *Idem*, p. 189 ; Deposition, p. 346 ; Dismissal of Petition, p. 371 ; Partnership, p. 520 ; *Idem*, p. 521 ; *Idem*, p. 522 ; Petition, p. 536.
- HUSSMAN.....2-437  
Concealment, p. 291 ; Fraud, p. 419 ; Judgment, p. 457 ; Sales, p. 612.
- HUTCHINS *v. MUZZY IRON WORKS.*...8-458  
Assignee, p. 232.
- HUTTO, SOLOMON.....8-787  
Lien, p. 487 ; Waiver, p. 673.
- HYDE, ASSIGNEE, *v. CORRIGAN.*.....9-466  
Procuring and Suffering to be Taken, p. 571.
- HYDE *v. BANCROFT et al.*.....8-24  
Injunction, p. 444.
- HYDE, EDMONDSON *v.*.....7-1  
Assignee, p. 229 ; Claim and Delivery, p. 280 ; Exemption, p. 404 ; Fraud, p. 417 ; Gold Coin, p. 431 ; Mortgage, p. 504 ; Payment, p. 531.
- HYDE *v. SONTAG & ELDRIDGE.*.....8-225  
Four and Six Months, p. 414 ; Limitation, p. 488.
- HYDE *v. WOODS.*.....10-54  
Priority, p. 567 ; Stock Board, p. 642 ; Surplus, p. 656.
- HYMAN.....2-333  
Adjournment, p. 184.
- HYMES, JACOB.....10-433  
Amendment, p. 205 ; Burden of Proof, p. 274 ; Creditors, p. 337 ; Examination, p. 392 ; Petition, p. 533 ; *Idem*, p. 534 ; Practice, p. 550 ; Practice, p. 554 ; Verification, p. 670.
- HYSLOP *v. HOPPOCK et al.*.....6-552  
Service of Papers, p. 628 ; Subpoena, p. 645.

- HYSLOP v. HOPPOCK et al.**.....6-557  
**INDEPENDENT INSURANCE CO.**.....6-169.  
 Courts, p. 329 ; Jurisdiction, p. 465.  
**INDEPENDENT INSURANCE CO.**.....6-260  
 Assets, p. 220 ; Corporation, p. 306 ;  
 Courts, p. 332 ; Jurisdiction, p. 468.  
**INDIANAPOLIS, CINCINNATI, AND LAFAYETTE R. R. Co.**.....8-302  
 Corporation, p. 311 ; Discontinuance of  
 Proceedings, p. 369 ; Practice, p. 548.  
**INGALLS, HASKELL v.**.....5-205  
 Four and Six Months, p. 414 ; Injunction,  
 p. 441 ; Stay of Proceedings, p. 639.  
**INNES v. CARPENTER.**.....4-412  
 Crit., p. 33 ; Commercial Paper, p. 285.  
**IOWA, MINN., AND N. PAC. R. R. Co.,**  
**WINTER v.**.....7-289  
 Acts of Bankruptcy, p. 175 ; *Idem*,  
 p. 181 ; Corporation, p. 306 ; Stock, p. 642 ;  
 Suspension of Payment, p. 655.  
**IRON MOUNTAIN Co.**.....4-646  
 Foreclosure, p. 411 ; Lien, p. 484 ;  
 Provable Debt, p. 585.  
**IRVING v. HUGHES.**.....2-62  
 Equity, p. 380 ; Execution, p. 398 ; In-  
 junction, p. 445 ; Practice, p. 550 ; Sum-  
 mary Proceedings, p. 647.  
**ISAACS & COHN.**.....6-92  
 Separate Claims, p. 627.  
**ISELIN et al., CLARKE v.**.....9-19  
 Confession of Judgment, p. 294 ; Pref-  
 erence, p. 562 ; Secured Creditor, p. 623.  
**ISIDORE & BLUMENTHAL.**.....1-264  
 Examination, p. 389 ; Laches, p. 476.  
**ISIDOR, STEWART v.**.....1-485  
 Creditors, p. 336 ; Discharge, p. 363 ;  
 Lien, p. 487.  
**JACKSON in re.**.....8-424  
 Cost of Fees, p. 315 ; *Idem*, p. 317 ; Ex-  
 amination, p. 392.  
**JACKSON v. MILLER et al.**.....9-143  
 Jurisdiction, p. 472.  
**JACKSON & PEARCE.**.....2-508  
 Assignee, p. 245 ; *Idem*, p. 246 ; *Idem*,  
 p. 248 ; Homestead, p. 433 ; Practice, p.  
 548.  
**JACKSON, STEPHENSON v.**.....9-255  
 See Stephenson v Jackson Post.  
**JACOBY.**.....1-118  
 Arrest, p. 215 ; Fraud, p. 416.  
**JAMES.**.....2-227  
 Arrest, p. 216 ; Discharge, p. 355 ; Sur-  
 plus, p. 656.  
**JANEWAY.**.....4-100  
 Trust, 663.  
**JAY COOKE & Co.**.....10-126  
 Appeal, 208 ; Assignee, p. 239 ; Bank-  
 rupt, p. 265 ; Examination, p. 390.  
**JAYCOX & GREEN.**.....7-140  
 Attorney Counsel, p. 263 ; Costs and  
 Fees, p. 315.  
**JAYCOX & GREEN.**.....7-303  
 Certificate, p. 274 ; Dividend, p. 375 ;  
 Practice, p. 551 ; Proof of Debt, p. 574 ;  
 Provable Debt, p. 581 ; Secured Creditor,  
 p. 621 ; Trust, p. 664.  
**JAYCOX & GREEN.**.....7-578  
 Commercial Paper, p. 286.  
**JAYCOX & GREEN.**.....8-241  
 Costs and Fees, p. 315 ; Proof of Debt,  
 p. 578 ; Secured Creditor, p. 624.  
**JELSH & DUNNEBACKE in re.**.....9-412  
 Evidence, p. 386.  
**JENKINS, ASSIGNEE, v. MAYER.**.....3-776  
 Pledge, p. 554 ; Preference, p. 557.  
**JENKINSON, KANE v.**.....10-316  
 Action, p. 182 ; Advances, p. 193 ; Bar-  
 gain and Sale, p. 269 ; Default, p. 343.  
**JERSEY CITY WINDOW GLASS Co.**.....1-426  
 Acts of Bankruptcy, p. 179 ; Amend-  
 ment, p. 204 ; Commercial Paper, p. 383 ;  
 Fraud, p. 429.  
**JERVIS v. SMITH.**.....3-593  
 Dividend, p. 375 ; Equity, p. 380 ;  
 Marshaling of Assets, p. 494 ; Secured  
 Creditor, p. 621.  
**JEWETT, F.**.....1-491  
 Crit., p. 33 ; Distribution, p. 373 ; Part-  
 nership, p. 520.  
**JEWETT, F.**.....1-495  
 Assets, p. 222.  
**JOBBS v. MONTAGUE et al.**.....6-117  
 Marshal, p. 493 ; Service of Papers, p.  
 628 ; Subpoena, p. 644.  
**JOBBS v. MONTAGUE et al.**.....6-509  
 Crit., p. 33 ; Courts, p. 321 ; Different  
 Districts, p. 348 ; Jurisdiction, p. 465.  
**JOHANN.**.....4-434  
 Fraud, p. 421 ; Judgments, p. 457 ;  
 Secured Creditor, p. 623.  
**JOHANN, AVERY v.**.....3-144  
 Crit., p. 30 ; Secured Creditor, p. 622.  
**JOHNSON v. BISHOP.**.....8-533  
 Assignee, p. 236 ; Attachment, p. 259.  
**JOHNSON, REESER v.**.....10-467  
 Judgment, p. 471 ; Stay of Proceed-  
 ings, p. 639.

- JOLIET IRON & STEEL CO.**.....10-60  
Amendment, p. 202; Petition, p. 532;  
Pleadings, p. 537.
- JONES**.....2-59  
Amendment, p. 204; *Idem*, p. 206; Ar-  
rangement, p. 214; Proof of Debt, p. 572;  
*Idem*, p. 576.
- JONES**.....4-347  
Apportionment, p. 213; Compensation,  
p. 288; Contract, p. 303.
- JONES**.....9-491  
Costs and Fees, p. 313.
- JONES, B. F.**.....7-506  
Assignee, p. 239.
- JONES, G. C.**.....6-386  
Contempt, p. 301; Examination, p. 394.
- JONES et al.**.....9-557  
Husband and Wife, p. 438; Provable  
Debt, p. 586; Wife of Bankrupt, p. 679.
- JONES, ALABAMA & CHATTANOOGA R. R.**  
**Co. v.**.....5-97  
Absence, p. 172; Adjudication, p. 187;  
Appearance, p. 212; Attorney and Coun-  
sel, p. 260; *Idem*, p. 261; Construction,  
p. 299; Courts, p. 324; Pleading, p. 543;  
Proceedings in Bankruptcy, p. 568; Rail-  
road Corporation, 589; Service of Pa-  
pers, p. 628.
- JONES, ALABAMA & CHATTANOOGA R. R.**  
**Co. v.**.....7-145  
Amendment, p. 206; Courts, p. 323;  
*Idem*, p. 324; Jurisdiction, p. 464; Rec-  
ord, p. 595.
- JONES & CULLOM v. KNOX**.....8-559  
Amount Due, p. 207; Bankrupt Act,  
p. 267; Contingent Liability, p. 303; Dis-  
charge, p. 354; *Idem*, p. 366; Surety, p.  
649.
- JONES v. KINNEY et al.**.....4-650  
Assignee, p. 228; Liability, p. 478;  
Preference, p. 563.
- JONES v. LEACH et al.**.....1-595  
Commencement of Proceedings, p. 282;  
Injunction, p. 441; Jurisdiction, p. 463.
- JONES, WHITE v.**.....6-175  
Assignee, p. 231; Distribution, p. 374;  
Lien, p. 481; Pleading, p. 537.
- JORDAN**.....8-180  
Amendment, p. 200; Congress, p. 294;  
Constitutionality, p. 297; Contract, p.  
304; Judgment, p. 459; Lien, p. 481;  
*Idem*, p. 483; Remedy, p. 604; Uniform-  
ity of Act, p. 667.
- JORDAN, JAMES**.....9-416  
Merger, p. 497; Mortgage, p. 508;  
*Idem*, p. 509.
- JORDAN, W. A.**.....10-427  
Amendment, p. 200; Exemption, p.  
400; Lien, p. 482.
- JORDAN, W. G.**.....3-182  
Priority, p. 565.
- JOREY & SONS**.....2-668  
Books of Account, p. 272; Discharge,  
p. 352.
- JOSLYN**.....8-478  
Crit., p. 34; Landlord, p. 476; Rent, p. 605.
- JUDSON**.....1-364  
Consultation, p. 299; Examination, p.  
393.
- JUDSON v. KELTY et al.**.....6-165  
Corporation, p. 309; Mortgage, p. 503;  
Ordinary Course of Business, p. 516.
- KAHLEY et al.**.....4-378  
Discretion, p. 370; Evidence, p. 384;  
Lien, p. 486; Mortgage, p. 503;ordi-  
nary Course of Business, p. 516; Part-  
nership, p. 526; Preference, p. 560; Pur-  
chaser, p. 587; Sales, p. 613; Waiver, p.  
674.
- KAHLEY et al.**.....6-189  
Crit., p. 34; Assets, p. 220; Discharge,  
p. 356; Fifty per Cent., p. 409.
- KANE v. JENKINSON**.....10-316  
Action, p. 182; Advances, p. 193; Bar-  
gain and Sale, p. 269; Default, p. 343.
- KANE v. RICE**.....10-469  
Chattel Mortgage, p. 279; Mortgage,  
p. 507.
- KANSAS CITY STONE & MARBLE MANUFAC-**  
**TURING COMPANY**.....9-76  
Fraud, p. 419; Trust, p. 664.
- KARPER et al., HOOD et al. v.**.....5-358  
Confession of Judgment, p. 294; Ex-  
ecution, p. 399; Four and Six Months, p.  
414; Intent, p. 451; Power of Attorney,  
p. 546; Secured Creditor, p. 621; Trans-  
fer, p. 662.
- KARR v. WHITTAKER**.....5-123  
Adjudication, p. 190; Injunction, p.  
444; Parties, p. 519.
- KEACH, WM.**.....3-13  
Books of Account, p. 271.
- KEAN & WHITE**.....8-367  
Amendment, p. 200; Constitutionality,  
p. 297; Discharge, p. 355; Exemption,  
p. 400.

- KEATING v. KEEFER**.....5-133  
Husband and Wife, p. 436 ; Wife of Bankrupt, p. 678.
- KEEFER**.....4-389  
Acts of Bankruptcy, p. 181 ; Pleading, p. 543 ; Sales, p. 613 ; Specifications, p. 635.
- KEEFER, KEATING v.**.....5-133  
Husband and Wife, p. 436 ; Wife of Bankrupt, p. 678.
- KEELER**.....10-419  
Admission, p. 192 ; Allegation, p. 198 ; Petition, p. 535 ; Pleading, p. 537.
- KEENAN v. SHANNON et al.**.....9-441  
Injunction, p. 445.
- KEHR et al., SMITH v.**.....7-97  
Crit., p. 35 ; Consideration, p. 295 ; Distribution, p. 372 ; Fraud, p. 431 ; Homestead, p. 433 ; Sales, p. 615 ; Secured Creditor, p. 625 ; Setting Aside Conveyance, p. 630 ; Settlement on Wife, p. 632.
- KEHR v. SMITH**.....10-49  
Consideration, p. 296 ; Creditors, p. 335 ; Distribution, p. 372 ; Husband and Wife, p. 438 ; Married Woman, p. 492 ; Settlement on Wife, p. 632.
- KELLOGG, ATKINSON v.**.....10-535  
Assignee, p. 242 ; Counter-Claim, p. 320 ; Dividend, p. 376.
- KELLY et al., ANTRIM, ETC., v.**.....4-587  
Fraud, p. 430.
- KELLY v. STRANGE**.....3-8  
Dower, p. 376.
- KELSEY, LEIGHTON v.**.....4-471  
Attachment, p. 258 ; Courts, p. 325.
- KELTY et al., JUDSON v.**.....6-165  
Corporation, p. 309 ; Mortgage, p. 503 ; Ordinary Course of Business, p. 516.
- KEMPNER**.....6-521  
Concealment, p. 291.
- KENNEDY & MACKINTOSH**.....7-337  
Courts, p. 327 ; General Orders, p. 431 ; Marshal, p. 493 ; Rules, p. 611 ; Service of Papers, p. 628.
- KENT & Co. v. L. T. DOWNING**.....10-538  
Parties, p. 518.
- KENYON & FENTON**.....6-238  
Acts of Bankruptcy, p. 181 ; Commercial Paper, p. 285 ; Wages, p. 673.
- KEROSENE OIL Co.**.....2-528  
Assignee, p. 244 ; Courts, p. 322 ; Injunction, p. 443 ; Mortgage, p. 505.
- KERR, W. W.**.....2-388  
Execution, p. 398.
- KERR & ROACH**.....9-567  
Adjudication, p. 191 ; Homestead, p. 435.
- KEYS, MILLER v.**.....3-224  
Burden of Proof, p. 273 ; Consideration, p. 295 ; Debt, p. 342 ; Fraud, p. 432 ; Insolvency, p. 447.
- KIMBALL**.....1-193  
Arrest, p. 215 ; Fraud, p. 416 ; Imprisoned Debtor, p. 439 ; Witness, p. 679.
- KIMBALL**.....2-354  
Crit., p. 34 ; Arrest, p. 215 ; Fiduciary Debt, p. 406.
- KIMBALL**.....2-204  
Arrest, p. 215 ; Debt, p. 339 ; Fiduciary Debt, p. 406 ; Liability, p. 477.
- KIMBALL, SCAMMON v.**.....8-337  
Corporation, p. 311 ; Set-off, p. 629 ; Stockholder, p. 643 ; Trustee, p. 666.
- KING**.....10-566  
Amendment, p. 202 ; Discharge, p. 351 ; Fifty per Cent., p. 409.
- KING, D. B.**.....10-103  
Burden of Proof, p. 273 ; Procuring and Suffering to be Taken, p. 572.
- KING, JOHN**.....8-285  
Fraud, p. 417 ; Title, p. 659.
- KING, JOHN**.....9-140  
Distribution, p. 373 ; Trust, p. 664.
- KING & KING**.....7-279  
Notice, p. 513 ; Publication, p. 536 ; Time, p. 657.
- KINGON**.....3-446  
Amendment, p. 206 ; Pleading, p. 538.
- KINGSBURY et al.**.....3-318  
Construction, p. 298 ; Evidence, p. 384 ; Fraud, p. 425 ; Preference, p. 557.
- KINGSLEY, D. P.**.....1-329  
New Promise, p. 510 ; Provable Debt, p. 585 ; Schedules, p. 618 ; Statute of Limitation, p. 637.
- KINGSLEY, N. W.**.....7-558  
Counterclaim, p. 320 ; Examination, p. 398.
- KINKEAD**.....7-439  
Adjudication, p. 189 ; Husband and Wife, p. 437 ; Married Woman, p. 492.
- KINNEY et al., JONES v.**.....4-650  
Assignee, p. 228 ; Liability, p. 478 ; Preference, p. 563.
- KINTZING**.....3-217  
Injunction, p. 446.
- KINZIE v. WINSTON**.....4-84  
Accretion, p. 173.



- KIPP**.....4-598  
Surrender, p. 651.
- KLANCKE**.....4-648  
Judgment, p. 456; Lien, p. 488.
- KLEIN, BRADSHAW v.**.....1-542  
Fraud, p. 419; Recovery of Property, p. 595.
- KNAPP, RISON, ETC., v.**.....4-849  
Bankrupt, p. 266; *Bona fide* Purchaser, p. 270; Fraud, p. 422; Insolvency, p. 447; Knowledge of Insolvency, p. 475; Ordinary Course of Business, p. 516; *Idem*, p. 517; Preference, p. 558; Trover, p. 663.
- KNICKERBOCKER INSURANCE CO. v. COM-STOCK**.....8-145  
Courts, p. 325; Practice, p. 554; Writ of Error, p. 681.
- KNICKERBOCKER INSURANCE CO. v. COM-STOCK**.....9-484  
Debt, p. 340; Insurance, p. 450.
- KNIGHT, In re**.....8-436  
Courts, p. 321; Distribution, p. 374; Partnership, p. 528; Precedents, p. 554.
- KNIGHT v. CHENEY**.....5-305  
Sales, p. 614; Summary Proceedings, p. 648.
- KNOEPFEL, W. H.**.....1-23  
Power of Attorney, p. 545.
- KNOEPFEL, W. H.**.....1-70  
Agent, p. 196; Judgment, p. 461; Power of Attorney, p. 545; Proof of Debt, p. 574; Provable Debt, p. 585; Statute of Limitations, p. 637.
- KNOX, JONES & CULLOM v.**.....8-559  
Amount Due, p. 207; Bankrupt Act, p. 267; Contingent Liability, p. 303; Discharge, p. 854; *Idem*, p. 366; Surety, p. 649.
- KNOX et al., MARSHALL v.**.....8-97  
Crit., p. 34; Appeal, p. 211; Assignee, p. 229; *Idem*, p. 238; *Idem*, p. 240; *Idem*, p. 247; Attachment, p. 257; Courts, p. 327; Execution, p. 397; Four and Six Months, p. 415; Jurisdiction, p. 473; Order, p. 516; Summary Proceedings, p. 648.
- KOCH**.....1-549  
Examination, p. 393.
- KOHLSAAT v. HOGUET et al.**.....5-159  
Assignee, p. 233; Preference, p. 555; Procuring and Suffering to be Taken, p. 570.
- KROGMAN**.....5-116  
Fraud, p. 423; Limitation, p. 488.
- KRONER, CASSARD et al. v.**.....4-569  
Insolvent Laws, p. 449; State Insolvent Laws, p. 686.
- KRUEGER et al.**.....5-439  
Estoppel, p. 383; Partnership, p. 527.
- KYLER, MORRIS**.....2-650  
Cost and Fees, p. 316; Examination, p. 387; Jurisdiction, p. 469; Residence, p. 608; Witness, p. 680.
- KYLER, MORRIS**.....3-46  
Appeal, p. 210.
- LACEY, DOWNS & CO.**.....10-477  
Adjournment, p. 183; Creditors, p. 336; Discontinuance of Proceedings, p. 369; Intervention, p. 454; Petition, p. 535.
- LACY, W. Y.**.....4-62  
Lien, p. 483; *Idem*, p. 486; Priority, p. 565.
- LADY BRYAN MINING Co.**.....4-144  
Crit., p. 34; Board of Trustees, p. 270; Corporation, p. 307.
- LADY BRYAN MINING Co.**.....4-394  
Crit., p. 34; Board of Trustees, p. 270; Corporation, p. 307; *Idem*, p. 312; Jurisdiction, p. 465.
- LADY BRYAN MINING Co.**.....6-252  
Adjudication, p. 186; Injunction, p. 441; Inventory, p. 454; Judgment, p. 462; Stay of Proceedings, p. 639.
- LAFLIN, BEAN v.**.....5-333  
Commercial Paper, p. 286; Endorser, p. 378; Liability, p. 478.
- LAKE, J. J.**.....6-542  
Adjudication, p. 192; Evidence, p. 385; Purchaser, p. 588.
- LAKE SUPERIOR SHIP CANAL R. R. & IRON Co.**.....7-376  
Assignee, p. 224; *Idem*, p. 225; Proof of Debt, p. 576; Vote, p. 672.
- LAKE SUPERIOR SHIP CANAL R. R. & IRON Co.**.....10-76  
Commercial Paper, p. 286; Evidence, p. 386; Proof of Debt, p. 574.
- LAKE SUPERIOR SHIP CANAL R. R. & IRON Co., SUTHERLAND et al. v.**.....9-298  
Mortgage, p. 507.
- LAMB, ASSIGNEE, v. DAMRON**.....7-509  
Different Districts, p. 349; Jurisdiction, p. 465.
- LAMBERT**.....2-426  
Assignee, p. 245; Chattel Mortgage, p. 279.
- LANE, J. M.**.....2-309

- LANE, G. H., & Co.....10-135  
Advances, p. 198 ; Composition, p. 290 ;  
Dividend, p. 375 ; Four and Six Months,  
p. 414 ; Fraud, p. 430 ; Provable Debt, p.  
584.
- LANER, *In re*.....9-494  
Assignment, p. 258 ; Fourteen Days, p.  
415.
- LANG.....2-480  
Discharge, p. 350.
- LANGLEY, W. H.....1-559  
Crit., p. 34 ; Acts of Bankruptcy, p.  
174 ; *Idem*, p. 176 ; Assignment, p. 258 ;  
*Idem*, p. 256 ; Estoppel, p. 382 ; Insolvent  
Laws, p. 448.
- LANGLEY v. PERRY.....2-596  
Assignment, p. 254 ; Courts, p. 324 ;  
Fraud, p. 421 ; Intent, p. 450.
- LANIER.....2-154  
Crit., p. 34 ; Affidavit, p. 195 ; Exami-  
nation, p. 388 ; *Idem*, p. 389 ; Verification,  
p. 669.
- LATHROP *et al.*.....8-410  
Champerty, p. 276 ; Fraud, p. 421 ;  
Purchase of Claims, p. 587.
- LATHROP *et al.*.....5-48  
Composition, p. 290 ; Distribution, p.  
372 ; Purchase of Claims, p. 587.
- LATHROP, LUDINGTON & Co.....3-46
- LATHROP, VOGLE, ETC., v.....4-489  
Agent, p. 196 ; Confession of Judgment,  
p. 293 ; Fraud, p. 422 ; Preference, p. 562 ;  
Secured Creditor, p. 625.
- LAURIE, BLOOD & HAMMOND.....4-82  
Assignee, p. 248 ; Rent, p. 605.
- LAWRENCE v. GRAVES.....5-279  
Depositions, p. 347 ; Transfer, p. 662.
- LAWSON.....2-54  
Assignee, p. 245 ; Exemption, p. 403 ;  
Money, p. 498.
- LAWSON.....2-113  
Assignee, p. 233 ; Attorney and Coun-  
sel, p. 263.
- LAWSON.....2-396  
Fraud, p. 422.
- LEACH *et al.*, JONES v.....1-595  
Commencement of Proceedings, p. 282 ;  
Injunction, p. 441 ; Jurisdiction, p. 463.
- LEACHMAN.....1-391  
Crit., p. 34 ; Examination, p. 393.
- LEE, ASSIGNEE, v. GERMAN SAVINGS IN-  
STITUTION.....3-218  
Foreclosure, p. 211 ; Preference, p.  
559 ; Secured Creditor, p. 625.
- LEE, WHEELLOCK v.....10-363  
Assignee, p. 234 ; Usury, p. 668.
- LEEDS.....1-521  
Acts of Bankruptcy, p. 175 ; *Idem*, p.  
179 ; Commercial Paper, p. 283 ; Confes-  
sion of Judgment, p. 293 ; Fraud, p. 429 ;  
Power of Attorney, p. 545 ; Suspension  
of Payment, p. 653.
- LEIGHTON, J.....5-95  
Discharge, p. 365 ; Jurisdiction, p. 471 ;  
Residence, p. 609.
- LEIGHTON v. KELSEY.....4-471  
Attachment, p. 258 ; Courts, p. 325.
- LEITER *et al.* v. PAYSON.....9-205  
Attorney and Counsel, p. 260 ; Corpo-  
ration, p. 308.
- LELAND, W. & C.....5-222  
Adjudication, p. 190 ; Assignee, p. 229 ;  
Different Districts, p. 348 ; Discharge, p.  
362 ; Partnership, p. 521 ; Priority, p.  
566 ; Proceedings in Bankruptcy, p. 569.
- LELAND, S., *et al.*.....9-209  
Surrender, p. 652.
- LENIHAN v. HAMAN *et al.*.....8-537  
Assignee, p. 231 ; *Idem*, p. 232 ; As-  
signment, p. 252 ; Courts, p. 332 ; Sale,  
p. 616 ; Setting Aside Conveyance, p. 631.
- LENKE v. BOOTH.....5-351  
Commission Merchant, p. 287 ; Fiduci-  
ary Debt, p. 406.
- LEONARD.....4-562  
Amendment, p. 199 ; Bankrupt Act, p.  
267 ; Order, p. 515.
- LEVY, SAMUEL W. & MARK.....1-105  
Examination, p. 388 ; *Idem*, p. 391.
- LEVY, SAMUEL W. & MARK.....1-107  
Examination, p. 387 ; *Idem*, p. 391 ;  
Notice, p. 512 ; Practice, p. 548 ; Wit-  
ness, p. 679.
- LEVY, SAMUEL W. & MARK.....1-136  
Examination, p. 389.
- LEVY, SAMUEL W. & MARK.....1-184  
Attorney and Counsel, p. 261.
- LEVY, SAMUEL W. & MARK.....1-327  
Joint Liability, p. 454 ; Judgment, p.  
461 ; Proof of Debt, p. 575 ; Surrender,  
p. 650.
- LEWIS, A. T.....8-546  
Distribution, p. 373 ; Marshaling of  
Assets, p. 494 ; Partnership, p. 523.
- LEWIS, HENRY.....3-621  
Witness, p. 681.
- LEWIS, P. & H.....1-239  
Discharge, p. 363 ; Partnership, p. 526.

- LINCOLN & CHERRY.....7-334  
Discharge, p. 356 ; Fifty per Cent., p. 409.
- LINK, THORNHILL & CO. v.....8-521  
Four and Six Months, p. 415 ; Fraud, p. 429 ; Time, p. 658.
- LINN *et al.* v. SMITH.....4-46  
Claim, p. 280 ; Petition, p. 532 ; Provable Debt, p. 585.
- LITCHFIELD, E. C., *in re*.....9-506  
Death of Bankrupt, p. 339 ; Discontinuance of Proceedings, p. 368 ; Warrant, p. 676.
- LITTLE, W. H.....1-341  
Crit., p. 34 ; Amendment, p. 204 ; Partnership, p. 526.
- LITTLE, W. H.....2-294  
Carrying on Business, p. 274 ; Discharge, p. 360 ; Residence, p. 608.
- LITTLE, SMITH v.....9-111  
See Smith v. Little, *post*.
- LITTLEFIELD, H.....3-57  
Books of Account, p. 271 ; Discharge, p. 365 ; Examination, p. 392.
- LITTLEFIELD v. DELAWARE & HUDSON CANAL COMPANY.....4-258  
Courts, p. 324 ; Jurisdiction, p. 464 ; Pleading, p. 541 ; Review, p. 609.
- LOCKE, W. S.....2-382  
Contemplation of Bankruptcy, p. 300 ; Discharge, p. 350 ; *Idem*, p. 364.
- LOCKE *et al.*, STODDARD v.....9-71  
Foreclosure, p. 412 ; Lien, p. 481 ; Proceedings *in rem*, p. 569.
- LOCKETT v. HOGE.....9-167  
Mortgage, p. 505 ; Power of Attorney, p. 546 ; Sale, p. 616 ; Trustee, p. 666.
- LODER, B. F.....3-655  
Proof of Debt, p. 577.
- LODER, B. F.....4-190  
Contingent Liability, p. 302 ; Debt, p. 340 ; Endorser, p. 379 ; Liability, p. 478 ; Protest, p. 580 ; Provable Debt, p. 581.
- LODER BROS.....2-515  
Assignee, p. 222 ; Residence, p. 608.
- LODER BROS.....2-517  
Cost and Fees, p. 319.
- LOEB, SIMON & Co.....1-481  
Courts, p. 326 ; Encumbered Property, p. 377 ; Jurisdiction, p. 467.
- LONG, W. P. & Co., *in re*.....9-227  
Distribution, p. 374 ; Partnership, p. 523.
- LONGSTRETH v. PENNOCK.....7-449  
Assignee, p. 232 ; *Idem*, p. 246 ; Rent, p. 606.
- LORD.....3-243  
Examination, p. 393.
- LORD, F. C.....5-318  
Confession of Judgment, p. 294 ; Four and Six Months, p. 414 ; Fraud, p. 427 ; Preference, p. 562.
- LOUIS & ROSENHEIM.....2-449  
Assignment, p. 255 ; Insolvency, p. 446 ; Ordinary Course of Business, p. 517.
- LOW, BATCHELDER v.....8-571  
Courts, p. 330 ; Discharge, p. 358 ; Notice, p. 518 ; Pleading, p. 539.
- LOWENSTEIN, S. & R.....2-306  
Acts of Bankruptcy, p. 175 ; Suspension of Payment, p. 653.
- LOWENSTEIN, S. & R.....3-269  
Crit., p. 34 ; Cost and Fees, p. 318.
- LOWENSTEIN *et al.*, PENNINGTON, ETC., v.....1-570  
Assignee, p. 244 ; Attachment, p. 257 ; Four and Six Months, p. 413.
- LOWREE.....1-74  
Amendment, p. 205 ; Proof of Debt, p. 578 ; Withdrawal of Papers, p. 679.
- LUCAS, DARBY'S TRUSTEES v.....5-437  
Crit., p. 32 ; Preference, p. 555.
- LUCAS, TIFFANY v.....8-49  
Acts of Bankruptcy, p. 178 ; Sales, p. 615.
- LUKINS v. AIRD.....2-81  
Fraud, p. 428 ; Sales, p. 611.
- LUMPKIN, FANNIE E. *et al.*, v. W. THOMAS EASON.....10-549  
Homestead, p. 435 ; Husband and Wife, p. 437.
- LYNCH, SEDGWICK v.....8-289  
Fraud, p. 428 ; Intent, p. 451 ; Sales, p. 615.
- LYON, ISIDOR.....1-111  
Examination, p. 391.
- LYON, J. H.....7-182  
Assignee, p. 232 ; Contract, p. 303 ; Title, p. 659.
- M. & M. NATIONAL BANK OF PITTSBURGH v. BRADY'S IRON CO.....5-491  
Assignee, p. 223.
- MACHAD.....2-352  
Discharge, p. 362 ; Oath, p. 514 ; Specification, p. 635.
- MACHINE CO., BUCYRUS.....5-303  
Distribution, p. 373 ; Partnership, p. 525.

- MACINTIRE, JAMES**.....1-11  
Cost and Fees, p. 317; Examination, p. 392.
- MACKAY**.....4-67  
Discharge, p. 352.
- MACKAY & NEILSON**.....4-66  
Books of Account, p. 271.
- MAGIE**.....1-522  
Jurisdiction, p. 471; Residence, p. 608.
- MAGUIRE, RIGGIN v.**.....8-484  
Contingent Liability; p. 303: Provable Debt, p. 582; Wife of Bankrupt, p. 679.
- MALLORY, E.**.....4-153  
Assignee, p. 249; Cost and Fees, p. 313.
- MALLORY, E.**.....6-22  
Crit., p. 34; Courts, p. 327; Execution, p. 398.
- MALTBIE v. HOTCHKISS**.....5-485  
Conveyance, p. 305; Jurisdiction, p. 468.
- MANHEIM**.....7-342  
Acts of Bankruptcy, p. 181; Commercial Paper, p. 285.
- MANLY**.....8-291  
Chattel Mortgage, p. 277; Mortgage, p. 502.
- MANSFIELD, A. S.**.....6-388  
Debt, p. 340; Judgment, p. 461; Merger, p. 496.
- MANUFACTURERS' NATIONAL BANK, SMITH et al. v.**.....9-122  
Bankrupt Act, p. 268; Construction, p. 299; National Bank, p. 510.
- MANUFACTURERS' NATIONAL BANK OF PHILADELPHIA, MAYS v.**.....4-446  
Earnings of Bankrupt, p. 376; Proof of Debt, p. 579.
- MANUFACTURERS' NATIONAL BANK OF PHILADELPHIA, MAYS v.**.....4-660  
Assignment, p. 253; Burden of Proof, p. 273; Earnings of Bankrupt, p. 376; Payment, p. 330.
- MARCER, J. F.**.....6-351  
Creditors, p. 338; Payment, p. 531.
- MARCH, ASSIGNEE, v. HEATON & HUBBARD**.....2-180  
Bankrupt, p. 265; Fiduciary Debt, p. 406.
- MARKHAM, AUSTIN v.**.....10-548  
Assent, p. 218; Discharge, p. 366; Discontinuance of Proceedings, p. 370; Illegal Promise, p. 439; Non-suit, p. 511; Pleading, p. 540.
- MARKLEY, GARRISON v.**.....7-246  
Discontinuance of Proceedings, p. 363; Discovery, p. 370; Equity, p. 381; Jurisdiction, p. 466; Remedy, p. 603.
- MARKS**.....2-575  
Injunction, p. 444; Marshal, p. 493.
- MARKSON & SPAULDING v. HEANY**..4-511  
Crit., p. 34; Courts, p. 321; *Idem*, p. 323; Enjoining Proceedings in State Court, p. 379.
- MARSHALL**.....4-106  
Assets, p. 219; Gaming, p. 431.
- MARSHALL, Ex parte TRIM**.....5-23  
Lien, p. 484; Rent, p. 605.
- MARSHALL v. KNOX et al.**.....8-97  
Crit., p. 34; Appeal, p. 211; Assignee, p. 229; *Idem*, p. 238; *Idem*, p. 240; *Idem*, p. 247; Attachment, p. 257; Courts, p. 327; Execution, p. 397; Four and Six Months, p. 415; Jurisdiction, p. 473; Order, p. 516; Summary of Proceedings, p. 647.
- MARTIN**.....2-543  
Discharge, p. 350.
- MARTIN v. BERRY**.....2-629  
Bankrupt Act, p. 266; Insolvent Laws, p. 448; State Insolvent Laws, p. 636.
- MARTIN, ETC., SMITH et al. v.**.....4-274  
Fraud, p. 423; Limitation, p. 490.
- MARTIN, ETC., v. TOOF, PHILIPS & COMPANY**.....4-488  
Crit., p. 34; Burden of Proof, p. 272; Contemplation of Bankruptcy, p. 300; Evidence, p. 384; Ignorantia Legis, p. 439; Insolvency, p. 447; Intent, p. 451; Ordinary Course of Business, p. 517; Preference, p. 563.
- MARTIN, ETC., TOOF et al. v.**.....6-49  
Burden of Proof, p. 273; Fraud, p. 426; Insolvency, p. 448; Ordinary Course of Business, p. 517; Preference, p. 562.
- MASON, SMITH v.**.....6-1  
Crit., p. 35; Assignee, 240; Disputed Title, p. 371; Possession, p. 545; Stranger, p. 644; Summary Proceedings, p. 648.
- MASSACHUSETTS BRICK CO.**.....5-408  
Corporation, p. 312; Estoppel, p. 383.
- MASSEY et al. v. ALLEN**.....7-401  
Assignee, p. 235; Construction, p. 299; Fraud, p. 428; Transfer, p. 662.
- MASTERSON**.....4-553  
Crit., p. 34; Action, p. 181; Deposit in Court, p. 346.

- MASTERSON, ETC., v. HOWARD *et al.*** .5-130  
Appeal, p. 209; Parties, p. 518.
- MASTICK, MORGAN, ROOT & Co. v.** . . . .2-521  
Acts of Bankruptcy, p. 177; Assignee, p. 234; Bankrupt, p. 265; Bankrupt Act, p. 267; Evidence, p. 383; Fraud, p. 421; *Idem*, p. 422; *Idem*, p. 425; Insolvency, p. 446; Intent, p. 450; Preference, p. 557.
- MAURER, ASSIGNEE, v. E. FRANTZ.** .4-431  
Payment, p. 532; Preference, p. 558.
- MAWSON.** . . . . .1-265  
Certifying Questions, p. 275; Discharge, p. 353; *Idem*, p. 864.
- MAWSON.** . . . . .1-271  
Adjournment, p. 184; Discharge, p. 850.
- MAWSON.** . . . . .1-437  
Discharge, p. 359; Influencing Proceedings, p. 440; Pleading, p. 543.
- MAWSON.** . . . . .1-548  
Burden of Proof, p. 274; Discharge, p. 361; Influencing Proceedings, p. 440.
- MAXWELL v. FAXTON.** . . . . .4-210  
Practice, p. 553; Stay of Proceedings, p. 638.
- MAXWELL v. McCUNE.** . . . . .10-307  
Commercial Paper, p. 285; Exemption, p. 404; Jurisdiction, p. 472; Notice, p. 514; Rent, p. 607.
- MAY v. HARPER & ATHERTON.** . . . .4-478  
Amendment, p. 203.
- MAY & MERWIN, *In re.*** . . . . .9-419  
Rent, p. 606.
- MAY & WHITE.** . . . . .1-218  
Advertisement, p. 295; Sales, p. 611.
- MAYER, JENKINS, ETC., v.** . . . . .3-776  
Pledge, p. 544; Preference, p. 577.
- MAYS v. MANUFACTURERS' NATIONAL BANK OF PHILADELPHIA.** . . . .4-446  
Earnings of Bankrupt, p. 376; Proof of Debt, p. 579.
- MAYS v. MANUFACTURERS' NATIONAL BANK OF PHILADELPHIA.** . . . .4-660  
Assignment, p. 253; Burden of Proof, p. 273; Earnings of Bankrupt, p. 376; Payment, p. 330.
- McBRIEN, C.** . . . . .2-197  
Affidavit, p. 195; Assignee, p. 241; Examination, p. 389.
- McBRIEN, C.** . . . . .3-345  
Examination, p. 389.
- McCONNELL, WILLIAM.** . . . . .9-387  
Amendment, p. 205; Distribution, p. 372; Priority, p. 566; Secured Creditor, p. 624.
- McCRACKEN, BROOKE v.** . . . . .10-461  
Amendment, p. 203; Courts, p. 323; Fraud, p. 427; Knowledge of Insolvency, p. 475; Reasonable Cause, p. 592.
- McCUNE, MAXWELL v.** . . . . .10-307  
Commercial Paper, p. 285; Exemption, p. 404; Jurisdiction, p. 472; Notice, p. 514; Rent, p. 607.
- McCLELLAN.** . . . . .1-389  
Assignee, p. 244; *Idem*, p. 247; Encumbered Property, p. 377.
- McDERMOTT PATENT BOLT Co.** . . . . .3-128  
Acts of Bankruptcy, p. 175; Commercial Paper, p. 283; *Idem*, p. 284; Fraud, p. 429.
- MCDONALD, FRAZIER & FRY v.** . . . .8-237  
Death of Bankrupt, p. 239; Proceedings in Bankruptcy, p. 569.
- MCDONOUGH, BANKRUPT, WHITE, ASSIGNEE, v. RAFTERY.** . . . . .3-221  
Distribution, p. 372; Sale, p. 612.
- MCDOWELL *et al.*** . . . . .10-460  
Meetings of Creditors, p. 496.
- McFADEN.** . . . . .3-104  
Bond, p. 270; Married Woman, p. 492.
- McFARLAND, H. C. & Co., *In re.*** . . . .10-381  
Adjudication, p. 189; Creditors, p. 337; Partnership, p. 522.
- McGIE, ETC., FITCH *et al.* v.** . . . . .2-531  
Acts of Bankruptcy, p. 176; Judgment, p. 457; Preference, p. 561.
- McGILTON *et al.*** . . . . .7-294  
Assignee, p. 243; Judgment, p. 459; Lien, p. 486.
- McGOVERN, SPAULDING v.** . . . . .10-188  
Jurisdiction, p. 471; Misjoinder, p. 498; Parties, p. 519.
- McGRATH & HUNT.** . . . . .5-254  
Landlord, p. 476; Rent, p. 606.
- McGREADY v. HARRIS.** . . . . .9-135  
Commencement of Proceedings, p. 282; Deed, p. 343.
- McINTIRE, CHARLES H.** . . . . .1-151  
Discharge, p. 360.
- McINTIRE, CHARLES H.** . . . . .1-436  
Amendment, p. 207; Discharge, p. 350; Opposing Discharge, p. 514.
- McINTOSH.** . . . . .2-506  
Judgment, p. 458; Lien, p. 488; Proof of Debt, p. 578; Withdrawal of Papers, p. 679.

- McKAY & ALDUS *Ex parte* ROCKFORD, ROCK ISLAND COMPANY**.....3-50  
Estoppel, p. 382; Proof of Debt, p. 579.
- McKAY & ALDUS *Ex parte* ROCKFORD, ROCK ISLAND COMPANY**.....7-230  
Advances, p. 194; Fixtures, p. 410; Indemnity, p. 439; Mortgage, p. 501; *Idem*, p. 502; Mortgage, p. 503; Preference, p. 560; Preferred Creditor, p. 564; Secured Creditor, p. 620.
- McKERCHER & PETTIGREW**.....8-409  
Exemption, p. 403; Partnership, p. 523.
- McKIBBIN, MITCHELL v.**.....8-548  
Assignee, p. 236; *Idem*, p. 240; Equity, p. 381; Fraud, p. 427; Transfer, p. 662; Trover, p. 663.
- McKINSEY & BROWN v. HARDING *et al.***4-38  
Insanity, p. 446; Usury, p. 668.
- McKNIGHT, GILLESPIE v.**.....8-468
- McLAREN, HARRISON v.**.....10-244  
Advances, p. 193; Distribution, p. 372; Preference, p. 559; Transfer, p. 663.
- McLEAN *et al.* v. BROWN, WEBER & COMPANY**.....4-585  
Crit., p. 34; Suspension of Payment, p. 654.
- McLEAN *et al.*, SMITH v.**.....10-260  
Chattel Mortgage, p. 278; Fraud, p. 424; Interest, p. 453; Mortgage, p. 500.
- McLEAN**.....2-567  
Bankrupt Act, p. 267.
- McMILLAN & Co. v. SCOTT & ALLEN**..2-86  
Marshal, p. 493.
- McNAIR**.....2-219  
Witness, p. 680.
- McNAIR**.....2-343  
Withdrawal of Papers, p. 679.
- McNAUGHTON, *In re.***.....8-44  
Acts of Bankruptcy, p. 180; Discontinuance of Proceedings, p. 369; Suspension of Payment, p. 655; Waiver, p. 674.
- McVEY**.....2-257  
Discharge, p. 360; Specification, p. 634.
- MEAD, ASSIGNEE OF RUSSELL & TREMAIN, v. NATIONAL BANK OF FAYETTEVILLE**.....2-173  
Distribution, p. 373; Joint Liability, p. 455; Partnership, p. 523; Provable Debt, p. 580.
- MEAD v. THOMPSON**.....8-529  
Appeal, p. 211.
- MEADOR *et al.* v. EVERITT**.....10-421  
Assignment, p. 251; Lease, p. 477.
- MEALY**.....2-123  
Bankrupt, p. 265; Cost and Fees, p. 315.
- MEBANE**.....3-347  
Assignee, p. 241; *Idem*, p. 245; *Idem*, p. 247; Judgment, p. 459; Sales, p. 612.
- MEDBURY v. SWAN**.....8-537  
Discharge, p. 351; Equity, p. 381; Laches, p. 476; Pleading, p. 539.
- MEEKINS, KELLY & COMPANY v. CREDITORS**.....3-511  
Courts, p. 381; Insolvent Laws, p. 449.
- MEEKS v. WHATELY**.....10-498  
Encumbered Property, p. 377; Fraud, p. 429; Lien, p. 480; *Idem*, p. 481; *Idem*, p. 486; *Idem*, p. 487; Sales, p. 617; Taxes, p. 656.
- MELICK**.....4-97  
Adjudication, p. 189; Partnership, p. 520.
- MENCK *et al.*, SEDGWICK v.**.....1-425  
Crit., p. 35; Injunction, p. 446.
- MENCK *et al.*, SEDGWICK v.**.....1-675  
Crit., p. 35; Assignee, p. 230.
- MENDENHALL**.....9-235  
Books of Account, p. 272; Production of Books and Papers, p. 572.
- MENDENHALL**.....9-380  
Arrangement, p. 214; Discontinuance of Proceedings, p. 370.
- MENDENHALL**.....9-497  
Corporation, p. 309; Liability, p. 478.
- MENDENHALL v. CARTER**.....7-320  
Acts of Bankruptcy, p. 180; Confederate Money, p. 292; Suspension of Payment, p. 655.
- MENDENHALL v. CARTER**.....7-320  
Commercial Paper, p. 284.
- MERCHANTS' INSURANCE Co.**.....6-43  
Acts of Bankruptcy, p. 176; *Idem*, p. 177; *Idem*, p. 179; Administration of Bankrupt's Estate, p. 192; Jurisdiction, p. 465; Rent, p. 606.
- MERCHANTS' NATIONAL BANK OF HASTINGS v. TRUAX**.....1-545  
Mortgage, p. 500.
- MERRICK**.....7-459  
Commissioner, p. 287; Jurisdiction, p. 469; Proof of Debt, p. 574; *Idem*, p. 576.
- MERRIFIELD**.....8-98  
Rent, p. 605.
- MORRILL**.....8-117  
Assignee, p. 233.



- MERRITT, FORSAITH, ETC., v.**.....8-48  
Partnership, p. 527; Preference, p. 563.
- MERRITT v. GLIDDEN *et al.***.....5-157  
Judgment, p. 458.
- MERRITT, WILLIAMS v.**.....4-706  
Pleading, p. 538; Stay of Proceedings, p. 637; Final Judgment, p. 410.
- METCALF & DUNCAN**.....1-201  
Injunction, p. 442; Stay of Proceedings, p. 637.
- METZGER**.....2-355  
Assignee, p. 242; Mortgage, p. 499.
- METZLER & COPPERTHWAIT**.....1-38  
Denial of Bankruptcy, p. 345; Injunction, p. 441; Perishable Property, p. 532.
- MEYER, E.**.....2-422  
Assignment, p. 253.
- MEYER, L.**.....1-581  
Fraud, p. 416; Proof of Debt, p. 575; Stay of Proceedings, p. 641; Trust, p. 663; Waiver, p. 673; Wife of Bankrupt, p. 677.
- MEYER v. AURORA INS. CO.**.....7-191  
Corporation, p. 308; Discharge, p. 354.
- MEYERS, ADAMS v.**.....8-214  
Assignee, p. 239; Distribution, p. 372; Proof of Debt, p. 575; Provable Debt, p. 582.
- MIGEL**.....2-481  
Arrest, p. 216; Courts, p. 321; Stay of Proceedings, p. 639.
- MILLER, W. D.**.....1-410  
Consent, p. 295; Discontinuance of Proceedings, p. 367.
- MILLER, ALVAH, v. CHARLES S. P. BOWLES *et al.***.....10-515  
Attachment, p. 257; Courts, p. 332; Four and Six Months, p. 413.
- MILLER *et al.*, CORNER v.**.....1-403  
Attachment, p. 257; Bankrupt Act, p. 263.
- MILLER *et al.*, JACKSON v.**.....9-143  
Assignee, p. 247.
- MILLER v. KEYS**.....8-224  
Burden of Proof, p. 273; Consideration, p. 295; Debt, p. 342; Fraud, p. 422; Insolvency, p. 447.
- MILLER v. O'BRIEN**.....9-26  
Attachment, p. 259; Proceedings in Bankruptcy, p. 569; Sheriff, p. 633.
- MILLS v. DAVIS**.....10-340  
Bankrupt, p. 266; Execution, p. 397; Money, p. 498; Sheriff, p. 633.
- MILLS & FITCH, STODBAUGH v.**.....8-361  
Burden of Proof, p. 273; Evidence, p. 386; Fraud, p. 418; Intent, p. 452.
- MILLWARD, SEDGWICK v.**.....5-347  
Assignee, p. 235; Cost and Fees, p. 320.
- MILNER**.....1-419  
Confederate Money, p. 292; Provable Debt, p. 581.
- MINNESOTA R. R. Co.**.....10-86  
Acts of Bankruptcy, p. 174; Corporation, p. 306.
- MINON v. VAN NOSTRAND**.....4-108  
Arrest, p. 216; Stay of Proceedings, p. 641.
- MITCHELL, J. C.**.....8-47  
Lien, p. 487; Waiver, p. 674.
- MITCHELL, T. P. *et al.***.....3-441  
Jurisdiction, p. 470; Partnership, p. 522.
- MITCHELL v. MCKIBBIN**.....8-548  
Assignee, p. 236; *Idem.* p. 240; Equity, p. 381; Fraud, p. 427; Transfer, p. 662; Trover, p. 663.
- MITTELDORFER, MOSES & CHARLES**...3-1  
Cost and Fees, p. 315.
- MITTELDORFER, MOSES & CHARLES**...3-39  
Courts, p. 327; Partnership, p. 526; Power of Attorney, p. 546.
- M. & M. NATIONAL BANK v. BRADY'S BEND IRON CO.**.....5-491  
Assignee, p. 223.
- MONTAGUE *et al.*, JOBBINS v.**.....6-117  
Marshal, p. 493; Service of Papers, p. 628; Subpoena, p. 644.
- MONTAGUE *et al.*, JOBBINS v.**.....6-509  
Crit., p. 33; Courts, p. 321; Different Districts, p. 348; Jurisdiction, p. 465.
- MONTGOMERY, H. B.**.....3-137  
Attorney and Counsel, p. 263; Cost and Fees, p. 315.
- MONTGOMERY, H. B.**.....8-374  
Crit., p. 34; Surrender, p. 651.
- MONTGOMERY, H. B.**.....3-426  
Debt, p. 340; Endorser, p. 378; Proof of Debt, p. 573.
- MONTGOMERY, H. B.**.....3-429  
Assets, p. 222; Proof of Debt, p. 573.
- MONTGOMERY *et al.*, ALLEN & Co. v.**10-504  
Advances, p. 193; Assignee, p. 236; Courts, p. 326; *Idem.* p. 333; Creditors, p. 336; Fraud, p. 419; Lien, p. 479; Sales, p. 617; Stay of Proceedings, p. 641; Suits, p. 647.

- MOORE, BARNES *v.* .....2-578  
 Crit., p. 34; Attachment, p. 257.
- MOORE & BROTHER *v.* HARLEY.....4-242  
 Petition, p. 536; Practice, p. 553;  
 Verification, p. 669.
- MOORE *ex parte* NAT. EXCHANGE BK.1-470  
 National Bank, p. 510; Provable Debt,  
 p. 583; Usury, p. 668.
- MOORE *et al.* *v.* WALTON *et al.*.....9-402  
 Partnership, p. 526.
- MOOREHEAD *ads.* SCOFIELD .....2-1  
 Cost and Fees, p. 317; Examination,  
 p. 387.
- MORFORD.....1-211  
 Crit., p. 34; Amendment, p. 206;  
 Schedules, p. 618.
- MORGAN, CONE &.....2-21  
 Acts of Bankruptcy, p. 179; Pleading,  
 p. 543; Suspension of Payment, p.  
 653.
- MORGAN *et al.*, COOKINGHAM *v.*.....5-16  
 Assignment, p. 255; Intent, p. 451.
- MORGAN, ROOT & CO. *v.* MASTICK...2-521  
 Acts of Bankruptcy, p. 177; Assignee,  
 p. 234; Bankrupt, p. 265; Bankrupt  
 Act, p. 267; Evidence, p. 383; Fraud,  
 p. 421; *Idem*, p. 422; *Idem*, p. 425; Insol-  
 vency, p. 446; Intent, p. 450; Preference,  
 p. 557.
- MORGAN *et al.* *v.* THORNHILL *et al.*....5-1  
 Appeal, p. 208; Courts, p. 328; Equity,  
 p. 380.
- MORGENTHAU .....1-402  
 Amendment, p. 206; Schedules, p. 618.
- MORRILL.....8-117  
 Chattel Mortgage, p. 278; Fraud, p.  
 424; Mortgage, p. 501; *Idem*, p. 502;  
 Surety, p. 649.
- MORRIS *et al.* *v.* SWARTZ.....10-305  
 Assignee, p. 224; *Idem*, p. 248; Claim,  
 p. 280; Courts, p. 330; Evidence, p.  
 387; Judicial Notice, p. 462; Purchaser,  
 p. 588.
- MORRISON, THOMAS.....10-105  
 Bank, p. 264; Bank Stock, p. 269;  
 Corporation, p. 308; Provable Debt, p.  
 585; Secured Creditor, p. 626; Stockhold-  
 er, p. 643.
- MORROW.....2-665  
 Fixtures, p. 410.
- MORSE.....7-56  
 Assignee, p. 250.
- MOORE *ex parte* NATIONAL EXCHANGE  
 BANK OF COLUMBUS .....1-470
- MORSS *v.* GUTMANN.....10-132  
 Appeal, p. 208.
- MOSELY, WELLS & Co., *In re.*.....8-208  
 Assignee, p. 232; Confusion of Goods,  
 p. 294; Homestead, p. 435.
- MOSES, S. I.....6-181  
 Adjudication, p. 191; Contempt, p.  
 301; Injunction, p. 445.
- MOSSelman & POELLAERT *v.* MEYER  
 CAEN .....10-513  
 Assignee, p. 228; Courts, p. 330;  
 Foreign Laws, p. 415.
- MOTT .....1-223  
 Assignee, p. 245; Contract, p. 304;  
 Fraud, p. 418.
- MULLER & BRENTANO .....3-329  
 Injunction, p. 445.
- MUNGER & CHAMPLIN.....4-295  
 Crit., p. 34; Agent, p. 196; Composi-  
 tion, p. 288; *Idem*, p. 289; Fraud, p. 418;  
 Intent, p. 451.
- MUNGER *et al.*, CURRAN *et al.* *v.*.....6-33  
 Acts of Bankruptcy, p. 178; Agent, p.  
 196; Demurrer, p. 344; Knowledge of  
 Insolvency, p. 475; Review, p. 610.
- MUNN .....7-468  
 Acts of Bankruptcy, p. 181; Commer-  
 cial Paper, p. 286; Evidence, p. 385;  
 Transfer, p. 662.
- MURDOCK, G. A.....3-146  
 Discharge, p. 361; Proof of Debt, p.  
 577.
- MURPHY.....10-48  
 Adjudication, p. 191; Discontinuance  
 of Proceedings, p. 370; Insanity, p. 446;  
 Setting aside Conveyance, p. 630.
- MURRAY.....3-765  
 Debt, p. 341; Provable Debt, p. 583.
- MURRAY, WOOLFOLK *v.*.....10-540  
 Courts, p. 331; Homestead, p. 433;  
 Jurisdiction, p. 472.
- MUZZY IRON WORKS, HUTCHINGS *v.*..8-458  
 Assignee, p. 232.
- MYERS *v.* SEELEY *et al.*.....10-411  
 Assessment on Stock, p. 218; Assignee,  
 p. 234; Corporation, p. 310; Stock, p. 642.
- MYRICK.....3-154  
 Assets, p. 219; Husband and Wife, p.  
 438; Proof of Debt, p. 573; Stamp Duty,  
 p. 636.
- NATIONAL BANK OF FAYETTEVILLE,  
 MEAD, ETC. *v.*.....2-178

- Distribution, p. 373; Joint Liability, p. 455; Partnership, p. 528; Provable Debt, p. 580.
- NATIONAL BANK M. & M. OF PITTSBURGH *v.* BRADY'S BEND IRON CO....5-491  
Assignee, p. 223.
- NATIONAL IRON CO.....8-422  
Assignee, p. 247; Corporation, p. 310; Sales, p. 615.
- NEAL *ex parte* BILL, ASSIGNEE, *v.* BECKWITH, VAUPEL & MOORE.....2-241  
Crit., p. 34.
- NEALE, C. E.....3-177  
Assignment, p. 251.
- NEEDHAM.....2-387  
Discharge, p. 361; *Idem*, p. 365; Schedules, p. 618.
- NEIHOF *et al.*, GOLSON *et al.* *v.*.....5-56  
Confession of Judgment, p. 293; Insolvency, p. 447; Judgment, p. 457; Knowledge of Insolvency, p. 475; Preference, p. 562.
- NEILSON.....7-505  
Default, p. 343.
- NEWLAND, F. F.....7-477  
Assignee, p. 230; Policy of Ins., p. 545.
- NEWLAND, F. F.....9-62  
Distribution, p. 373; Insurance, p. 450; Practice, p. 553; Proof of Debt, p. 577; Secured Creditor, p. 620.
- NEWMAN.....2-302  
Books of Account, p. 271; Discharge, p. 352; Secured Creditor, p. 624.
- NEW YORK KEROSENE OIL CO.....3-125  
Courts, p. 327; Jurisdiction, p. 467; Practice, p. 549.
- NEW YORK MAIL STEAMSHIP CO.....2-74
- NEW YORK MAIL STEAMSHIP CO....2-428  
Assignee, p. 228; *Idem*, p. 249; Attorney and Counsel, p. 264; Cost and Fees, p. 312
- NEW YORK MAIL STEAMSHIP CO....2-554  
Assignee, p. 228; Attorney and Counsel, p. 268; Cost and Fees, p. 314; Provable Debt, p. 580.
- NEW YORK MAIL STEAMSHIP CO....3-280  
Practice, p. 550; *Idem*, p. 552.
- NEW YORK MAIL STEAMSHIP CO....3-627  
Cost and Fees, p. 316.
- NICHOLS *et al.*, BAILEY *v.*.....2-478  
Advances, p. 193.
- NICKODEMUS.....3-230  
Commercial Paper, p. 285; Endorser, p. 378; Pleading, p. 543.
- NOAKES.....1-592  
Crit., p. 34; Assignee, p. 243; Claim and Delivery, p. 281; Cost and Fees, p. 319.
- NOBLE.....3-96  
Assignee, p. 226.
- NOONAN.....10-330  
Adjudication, p. 189; Courts, p. 321; Partnership, p. 522.
- NOONAN & CONOLLY.....3-267  
Books of Account, p. 272; Discharge, p. 361.
- NORRIS.....4-35  
Pleading, p. 541; *Idem*, p. 546.
- NORTH CAROLINA, STATE OF, *v.* TRUSTEES OF UNIVERSITY & C. DEWEY *et al.*.....5-466  
Courts, p. 325; Jurisdiction, p. 471.
- NORTH *v.* HOUSE *et al.*.....6-365  
Assignment, p. 255.
- NORTON, C. H.....6-297  
Adjournment, p. 183; Assignee, p. 224; Meeting of Creditors, p. 495.
- NOUNNAN & CO. ....6-579  
Priority, p. 566; Secured Creditor, p. 624; Wages, p. 673; Waiver, p. 674.
- NOUNNAN & CO.....7-15  
Commencement of Proceedings, p. 282; Construction, p. 299; Fraud, p. 426; Interpretation, p. 453; Priority, p. 566.
- NOYES B. B.....6-277  
Assignee, p. 228; *Idem*, p. 243; *Idem*, p. 249; Compensation, p. 288.
- O'BANNON.....2-15  
Books of Account, p. 271; Concealment, p. 291; Discharge, p. 352; Fraud, p. 417; Trader, p. 661.
- OBEAR.....10-151  
Amendment, p. 200.
- O'BRIEN, M. A.....1-176  
Adjudication, p. 190; Appeal, p. 210.
- O'BRIEN, MILLER *v.*.....9-26  
Attachment, p. 259; Proceedings in Bankruptcy, p. 569; Sheriff, p. 633.
- OCEAN NATIONAL BANK, RECEIVER OF, *v.* ESTATE OF ALFRED WILD....10-568  
National Bank, p. 510; Usury, p. 609.
- O'CONNER *v.* PARKER *et al.*.....4-713  
Commercial Paper, p. 285; Payment, p. 531.

- ODELL *v.* WOOTTEN .....4-188  
Discharge, p. 366; Surety, p. 649.
- O'DONOHUE.....3-245  
Attorney and Counsel, p. 262.
- O'DOWD.....8-451  
Assignee, p. 230.
- O'FARRELL.....2-484  
Bankrupt, p. 266; Discharge, p. 354.
- O'HARA, COMMONWEALTH *v.*.....1-86  
Arrest, p. 215; State Insolvent Laws, p. 636.
- O'KELL.....1-303  
Examination, p. 392.
- O'KELL.....2-105  
Burden of Proof, p. 273; Discharge, p. 353; Specification, p. 634.
- OLDS, M. & W. & L.....4-146  
Bankrupt, p. 266.
- OLMSTEAD.....4-240  
Practice, p. 547.
- O'NEALE, A. G.....6-425  
Trustee, p. 666.
- O'NEIL, FOWLER *ex parte*.....1-677  
Judgment, p. 461; Proof of Debt, p. 574.
- O'NEIL *v.* DOUGHERTY.....10-394  
Adjudication, p. 192; Appeal, p. 208; Assignee, p. 240.
- OPINION, ATTORNEY GENERAL.....9-117  
Payment, p. 530.
- ORCUTT.....4-538
- OREM & Co., *v.* HARLEY.....3-263  
Pleading, p. 538; *Ibid*, p. 543.
- O'RIELLY, AUSTIN *v.*.....8-129  
Distribution, p. 375; Lien, p. 425; Priority, p. 566; Rent, p. 606.
- ORNE, F.....1-57  
Assets, p. 218; Interest, p. 452; Set-off, p. 628; Unliquidated Damages, p. 667.
- ORNE, F.....1-79  
Amendment, p. 206; Schedule, p. 617.
- OSAGE VALLEY & SOUTH KANSAS R. R. Co. *in re*.....9-281  
Counter-Claim, p. 320; Dismissal of Petition, p. 371; Petition, p. 532.
- OUIMETTE.....3-566  
Answer, p. 208; Pleading, p. 538; *Idem*, p. 540; *Idem*, p. 541.
- OVERTON.....5-366  
Assignee, p. 223.
- OWEN & MURRIN.....8-6  
Insurance, p. 449; Wife of Bankrupt, p. 678.
- PACKARD, BACHMAN *v.*.....7-353  
Crit., p. 30; Assignee, p. 237; Courts, p. 323; *Idem*, p. 327; Jurisdiction, p. 464.
- PADDOCK, S.....3-396  
Claim, p. 280; Creditors, p. 337; Examination, p. 388; Jurisdiction, p. 469.
- PADDOCK, S.....6-133  
Debt, p. 341; Spirituous Liquors, p. 635.
- PAGE & DONAHUE.....8-453  
Cost and Fees, p. 317; *Idem*, p. 318; Interest, p. 452; Marshal, p. 493.
- PAINE *v.* CALDWELL.....6-558  
Different Districts, p. 348; Jurisdiction, p. 468.
- PALMER.....1-213  
Jurisdiction, p. 471; Residence, p. 608.
- PALMER.....3-283  
Chattel Mortgage, p. 278; Fraud, p. 423.
- PALMER, C. N.....3-301  
Appearance, p. 212.
- PALMER & Co., THE WARREN SAVINGS BANK *v.*.....10-239  
Amendment, p. 202; Bankrupt, p. 265; Denial of Bankruptcy, p. 346; Jury Trial, p. 474.
- PARKER *et al.*, O'CONNOR *v.*.....4-713  
Commercial Paper, p. 285; Payment, p. 531.
- PARKES, J. F. & C. R.....9-270  
Assets, p. 222; Exemption, p. 403.
- PARKES, J. F. & C. R.....10-82  
Amendment, p. 205; Assignee, p. 235; Proof of Debt, p. 573; Secured Creditor, p. 624; Vote, p. 673.
- PARISH.....9-572  
Debt, p. 342; Discharge, p. 354; Time, p. 658; Vote, p. 672.
- PARTRIDGE *v.* DEARBORN *et al.*.....9-474  
Assignee, p. 232; Judgment, p. 462; Lien, p. 484.
- PATTERSON.....1-101  
Adjournment, p. 185; Examination, p. 391; Proof of Debt, p. 575; Waiver, p. 673.
- PATTERSON.....1-125  
Adjournment, p. 184; Adjudication, p. 185; After-Acquired Property, p. 195; Assets, p. 220; Assignee, p. 230; Bankruptcy Court, p. 269; Commencement of Proceedings, p. 282.
- PATTERSON.....1-150  
Examination, p. 393.

- PATTERSON**.....1-152  
Examination, p. 895 ; Gaming, p. 481.
- PATTERSON**.....1-161  
Certifying Questions, p. 276.
- PATTERSON**.....1-307  
Arrest, p. 315 ; Discharge, p. 851 ;  
Fraud, p. 420.
- PAYNE et al. v. ABLE et al.**.....4-220  
Concealment, p. 291 ; Discharge, p.  
363 ; Pleading, p. 539 ; Schedules, p. 619.
- PAYSON v. DIETZ**.....8-193  
Action, p. 182 ; Assignee, p. 236 ; *Idem*,  
p. 237 ; Courts, p. 323 ; *Idem*, p. 327 ; *Idem*,  
p. 329 ; Jurisdiction, p. 466.
- PAYSON, LEITER et al. v.**.....9-205  
Attorney and Counsel, p. 260 ; Corpo-  
ration, p. 308.
- PEARSON**.....2-477  
Assignee, p. 223 ; Vote, p. 671.
- PEASE et al.**.....6-173  
Proceedings in Bankruptcy, p. 569 ;  
Provable Debt, p. 584 ; Purchase of  
Claims, p. 587.
- PECK, B.**.....8-757  
Certifying Questions, p. 275.
- PECKHAM et al., BARSTOW v.**.....5-72  
Crit., p. 30 ; Fraud, p. 422 ; Jurisdic-  
tion, p. 473 ; Mortgage, p. 506.
- PECKHAM et al., FERGUSON et ux. v.**.....6-569  
Adverse Claimant, p. 194 ; Assignee,  
p. 240.
- PEGUES**.....8-80  
Cost and Fees, p. 313.
- PEIPER v. HARMER**.....5-252  
Assignee, p. 237 ; Courts, p. 331 ; Ju-  
risdiction, p. 472 ; Limitations, p. 490.
- PENN et al.**.....3-582  
Discharge, p. 359 ; Jurisdiction, p. 465.
- PENN et al.**.....5-30  
Different Districts, p. 347 ; Jurisdiction,  
p. 469 ; Partnership, p. 527.
- PENN et al.**.....8-93  
Assignee, p. 248 ; Evidence, p. 386 ;  
Pleading, p. 539 ; Stay of Proceedings,  
p. 637.
- PENN & C. V. & L. H. CULVER**.....5-288
- PENNINGTON v. LOWENSTEIN et al.**.....1-570  
Assignee, p. 244 ; Attachment, p. 257 ;  
Four and Six Months, p. 413.
- PENNINGTON v. SALE & PHELAN et  
al.**.....1-572  
Disputed Title, p. 371 ; Judgment, p.  
458.
- PENNOCK, LONGSTRETH v.**.....7-449  
Assignee, p. 232 ; *Idem*, p. 246 ; Rent,  
p. 606.
- PENNY v. TAYLOR**.....10-200  
Courts, p. 321 ; *Idem*, p. 329 ; En-  
joining Proceedings in State Court, p.  
379 ; Execution, p. 397 ; Exemption, p.  
400 ; Fraud, p. 421 ; Homestead, p. 433 ;  
Injunction, p. 443 ; Jurisdiction, p. 467 ;  
*Idem*, p. 472 ; Stay of Proceedings, p. 641.
- PEOPLE'S MAIL STEAMSHIP CO.**.....2-553  
Injunction, p. 441 ; Possession, p. 545.
- PERDUE**.....2-183  
Exemption, p. 402.
- PERKINS**.....8-56  
Assets, p. 221 ; Assignee, p. 241 ; *Idem*,  
p. 250 ; Courts, p. 323 ; Practice, p. 547.
- PERKINS et al.**.....10-529  
Amendment, p. 202 ; Discharge, p.  
851 ; Principle and Surety, p. 565 ;  
Surety, p. 649.
- PERKINS v. GAY**.....3-772  
Discharge, p. 358 ; Impeaching Dis-  
charge, p. 439.
- PERRIN & HANCE**.....7-283  
Consideration, p. 296 ; Mortgage, p.  
506 ; *Idem*, p. 508 ; Preferred Creditor, p.  
564.
- PERRY**.....1-220  
Amendment, p. 207 ; Assignee, p. 250 ;  
Notice, p. 512 ; Schedules, p. 618.
- PERRY, LANGLEY v.**.....2-596  
Assignment, p. 254 ; Courts, p. 324 ;  
Fraud, p. 421 ; Intent, p. 450.
- PETRIE, et al.**.....7-332  
Assignee, p. 232 ; Set-off, p. 629.
- PETTIBONE, HAMLIN v.**.....10-173  
Amendment, p. 203 ; Knowledge of  
Insolvency, p. 475 ; Purchaser, p. 587.
- PETTIS**.....2-44  
Adjudication, p. 192 ; Arrest, p. 217 ;  
Fraud, p. 420 ; Impersonal Debtor, p.  
439 ; Judgment, p. 458.
- PFROMM, JOHN & MARTIN**.....8-857  
Assignee, p. 226 ; *Idem*, p. 227 ; Vote,  
p. 672.
- PHELPS et al., CASE v.**.....5-452  
Fraud, p. 430 ; Settlement on Wife,  
p. 631.
- PHELPS, CALDWELL & Co.**.....1-525  
Assignee, p. 224 ; *Idem*, p. 226 ; Meet-  
ing of Creditors, p. 495 ; Partnership, p.  
529 ; Power of Attorney, p. 546.
- PHELPS v. CLASEN**.....8-87  
Construction, p. 298 ; Debt, p. 341

- Evidence, p. 384; Pleading, p. 541; Statute of Frauds, p. 637.
- PHELPS v. DUDLEY**.....4-34  
Fraud, p. 423.
- PHELPS v. SELICK**.....8-390  
Contempt, p. 302; Courts, p. 332; Custody of Property, p. 338; Mortgage, p. 505.
- PHELPS v. STERNS**.....4-34  
Fraud, p. 423.
- PICKERING, WILLIAM J., In re**....10-208  
Amendment, p. 201; Congress, p. 295; Petition, p. 532.
- PIERCE & HOLBROOK**.....3-258  
Assignment, p. 254.
- PIERSON, WILLIAM H.**.....10-107  
Assignee, p. 248; *Idem*, p. 251; *Idem*, p. 252; Commencement of Proceedings, p. 282; Discharge, p. 352; *Idem*, p. 353; *Idem*, p. 361; *Idem*, p. 364; Partnership, p. 525; Preference, p. 564; Transfer, p. 663.
- PIERSON, WILLIAM H.**.....10-193  
Amendment, p. 199; Assent, p. 218; Creditors, p. 334; *Idem*, 335; Discharge, p. 351; *Idem*, p. 357; Fifty per Cent., p. 409.
- PIONEER PAPER CO.**.....7-250  
Examination, p. 388; *Idem*, p. 392; *Idem*, p. 395; Witness, p. 681.
- PIPER, E. L., v. E. H. BALDY**.....10-517  
Judgment, p. 457; *Idem*, p. 460.
- PITTOCK**.....8-78  
Contract, p. 304; Disallowing Claims, p. 348; Interest, p. 452; Interpretation, p. 453; Jurisdiction, p. 469.
- PLACE & SPARKMAN**.....4-541  
Appeal, p. 209; Practice, p. 547; Review, p. 610.
- PLATT v. ARCHER**.....6-465  
Assignee, p. 248; Cashier, p. 274; Corporation, p. 308; *Idem*, p. 310; Injunction, p. 445; Jurisdiction, p. 465; Order, p. 515; *Idem*, p. 516.
- POLEMAN, In re**.....9-376  
Assets, p. 221; Homestead, p. 436.
- POMEROY**.....2-14  
Assets, p. 219; False Swearing, p. 405; Wife of Bankrupt, p. 679.
- POOKE & STEERE, TILLINGHAST & COMPANY v.**.....5-161  
Crit., p. 33; Adjudication, p. 187; *Idem*, p. 189; Deposition, p. 346; Dismissal of Petition, p. 371; Partnership, p. 520; *Idem*, p. 521; *Idem*, p. 522; Petition, p. 536.
- POST v. CORBIN**.....5-11  
Equity, p. 380; Jurisdiction, p. 466; Remedy, p. 674.
- POTTER et al. v. COGGESHALL**.....4-73  
Mortgage, p. 501; Secured Creditor, p. 623.
- POWELL**.....2-45  
Acknowledgment, p. 173; Assignee, p. 223; Power of Attorney, p. 546; Relative of Bankrupt, p. 603.
- PRANKARD**.....1-297  
Different Districts, p. 347; Jurisdiction, p. 471; Parties, p. 519; Partnership, p. 527; Residence, p. 608.
- PRATT, E. D.**.....9-47  
Acts of Bankruptcy, p. 180; Suspension of Payment, p. 655.
- PRATT, D.**.....6-276  
Acts of Bankruptcy, p. 173; Insanity, p. 446.
- PRATT, Jr., v. CURTIS et al.**.....6-139  
Conveyance, p. 305; Four and Six Months, p. 414; Fraud, p. 417; *Idem*, p. 419; Jurisdiction, p. 467; Setting aside Conveyance, p. 630.
- PRESCOTT**.....9-385  
Assignee, p. 240; Creditors, p. 337; Expunging Proofs, p. 404; Usury, p. 668.
- PRESTON**.....3-163  
Amendment, p. 206.
- PRESTON**.....5-293  
Cost and Fees, p. 317; Provable Debt, p. 582.
- PRESTON, C. H.**.....6-545  
Assignee, p. 245; Attachment, p. 258; Cost and Fees, p. 312; *Idem*, p. 313; Lien, p. 481.
- PRICE**.....4-406  
Assignee, p. 249; Practice, p. 547.
- PRICE, J. S. & J.**.....6-400  
Partnership, p. 523.
- PRICE & MILLER**.....8-514  
Burden of Proof, p. 273.
- PRIEST, GILBERT v.**.....8-159  
Action, p. 182; Assignee, p. 238; Courts, p. 329; Fraud, p. 417.
- PRINCETON**.....1-618  
Surrender, p. 650.
- PUFFER**.....2-43  
Register, p. 599.
- PULVER, E.**.....2-313  
Oath, p. 514; Specification, p. 634.



- PULVER, J.**.....1-47  
Agreed Cases, p. 197; Certifying Questions, p. 275; Evidence, p. 388; Notice, p. 512; Residence, p. 607; Service of Papers, p. 627; Variance, p. 669; Warrant, p. 676.
- PURCELL & ROBINSON**.....2-22  
Mortgage, p. 504.
- PURCELL *et al.* v. WAGNER *et al.***.....5-23  
Lien, p. 484; Rent, p. 605.
- PURVIANCE v. UNION NATIONAL BANK OF PITTSBURGH**.....8-447  
Assignee, p. 231; *Idem*, p. 232; Title, p. 659.
- PURVIS**.....1-163  
Agent, p. 196; Assignee, p. 225; *Idem*, p. 226; Attorney and Counsel, p. 261; Joint Liability, p. 454; Power of Attorney, p. 546; Vote, p. 671.
- PUSEY, A.**.....6-40  
Bargain and Sale, p. 269; Contract, p. 303.
- PUSEY, A.**.....7-45  
Sales, p. 615.
- PUSEY, UNITED STATES v.**.....6-284  
Constitutionality, p. 297; Fraud, p. 418.
- RAFFAUF, JACOB**.....10-69  
Amendment, p. 201; *Idem*, p. 202; Petition, p. 533.
- RAFFERY, McDONOUGH, ETC., v.**.....3-221  
Distribution, p. 372; Sales, p. 612.
- RAINSFORD**.....5-381  
Discharge, p. 354.
- RANDELL & SUNDERLAND**.....3-18  
Acts of Bankruptcy, p. 174; Assignment, p. 253; *Idem*, p. 255; Insolvency, p. 447; Pleading, p. 540; Suspension of Payment, p. 653.
- RANKIN & PULLAN v. FLORIDA, ATLANTIC & GULF CENTRAL R. R. Co.**.....1-647  
Acts of Bankruptcy, p. 178; *Idem*, p. 179; Corporation, p. 306; Procuring and Suffering to be Taken, p. 570; Provable Debt, p. 585; War, p. 675.
- RAPPLEE, BALDWIN v.**.....5-19  
Appeal, p. 209.
- RASCH & BERNARD, TAYLOR v.**.....5-399  
Demurrer, p. 344; Equity, p. 381; Fraud, p. 430; Partnership, p. 524; Pleading, p. 538.
- RATCLIFFE**.....1-400  
Amendment, p. 207; Schedules, p. 618.
- RATHBONE**.....1-294  
Discharge, p. 361; Specification, p. 634.
- RATHBONE**.....1-324  
Discharge, p. 362; False Swearing, p. 405; Pleading, p. 543; Specification, p. 634.
- RATHBONE**.....1-536  
Concealment, p. 291; Discharge, p. 353; False Swearing, p. 405.
- RATHBONE**.....2-260  
False Swearing, p. 405; Fraud, p. 421; Partnership, p. 525; Wife of Bankrupt, p. 677.
- RAY**.....1-203  
Crit., p. 85; Creditors, p. 335; Examination, p. 394; Limitation, p. 489; Provable Debt, p. 585.
- RAYNOR**.....7-527  
Adjudication, p. 188; Attorney and Counsel, p. 260; Commercial Paper, p. 284; Cost and Fees, p. 316; Four and Six Months, p. 415; Petition, p. 586; Suspension of Payment, p. 655.
- READE v. ALEHOUSE**.....10-277  
Assignee, p. 248; Trustee, p. 666.
- REAKIRT**.....7-329  
Certifying Questions, p. 275.
- RECEIVER OF OCEAN NAT. BANK v. ESTATE OF WILD**.....10-568  
Interest, p. 453.
- REDMOND & MARTIN**.....9-408  
Conveyance, p. 305; Partnership, p. 524; Pleading, p. 539.
- REED**.....2-9  
Appeal, p. 210; Practice, p. 252.
- REED, H.**.....1-1  
Injunction, p. 441.
- REED BROS. & Co. v. TAYLOR *et al.***.....4-710  
State Insolvent Laws, p. 636.
- REESER v. JOHNSON**.....10-467  
Judgment, p. 461; Stay of Proceedings, p. 639.
- REPUBLIC INSURANCE Co.**.....8-197  
Construction, p. 298; Corporation, p. 310; Estoppel, p. 383; Liability, p. 478; Provable Debt, p. 583.
- REPUBLIC INSURANCE Co.**.....8-317  
Appearance, p. 212; Attorney and Counsel, p. 260; Laches, p. 476; Setting aside Conveyance, p. 630.
- REYNOLDS**.....9-50  
Insolvent Laws, p. 449.
- RHODES J. F., WM. FOSTER v.**.....10-523

- Lien, p. 485 ; Mortgage, p. 504 ; *Idem*, p. 507 ; Rent, p. 607.
- RIBBLE, ZANZINGER *v.*.....4-724  
Assignee, p. 239 ; Title, p. 658.
- RICE, GEORGE.....9-373
- RICE, KANE *v.*.....10-489  
Chattel Mortgage, p. 279 ; Mortgage, p. 507.
- RICHARDS.....4-93  
Examination, p. 393.
- RICHARDSON & RICHARDSON.....2-202  
Crit., p. 35 ; Different Districts, p. 348 ; Injunction, p. 442 ; Stay of Proceedings, p. 639.
- RICHMOND & GIBBS, BINGHAM *v.*....6-127  
Chattel Mortgage, p. 278 ; Mortgage, p. 500.
- RICHTER'S ESTATE.....4-222  
Debt, p. 339 ; Fraud, p. 426 ; Surrender, p. 651.
- RICKEY BROTHERS, ARMSTRONG *v.*...2-473  
Fraud, p. 422 ; Judgment, p. 457 ; Levy, p. 477 ; Preference, p. 556.
- RIGGIN *v.* MAGWIRE.....8-484  
Contingent Liability, p. 303 ; Provable Debt, p. 582 ; Wife of Bankrupt, p. 679.
- RIGGS, LECHTENBERG & Co.....8-90  
Interest, p. 452 ; Provable Debt, p. 583.
- RIPLEY, COREY *et al.* *v.*.....4-503  
Courts, p. 330 ; Discharge, p. 359.
- RISON, ASSIGNEE, *n.* KNAPP.....4-349  
Bankrupt, p. 266 ; *Bona fide* Purchaser, p. 270 ; Fraud, p. 422 ; Insolvency, p. 447 ; Knowledge of Insolvency, p. 475 ; Ordinary Course of Business, p. 516 ; *Idem*, p. 517 ; Preference, p. 558 ; Trover, p. 663.
- ROACH, COLE *v.*.....10-288  
Claim, p. 280 ; Courts, p. 329 ; Damages, p. 339 ; Discharge, p. 334 ; Discontinuance of Proceedings, p. 370 ; Pleading, p. 540 ; Provable Debt, p. 585.
- ROBINETT, ALSTON *v.*.....9-74  
Courts, p. 330 ; Discharge, p. 359
- ROBINSON, JESSE H.....1-8
- ROBINSON, JESSE H.....1-285
- ROBINSON.....2-341  
Arrest, p. 216 ; Assignee, p. 242 ; Fraud, p. 416 ; Judgment, p. 461.
- ROBINSON & CHAMBERLAIN.....2-516  
Examination, p. 391.
- ROBINSON & CHAMBERLAIN.....3-70  
Cost and Fees, p. 314 ; Specification, p. 635.
- ROBINSON *et al.*, CORR *v.*.....9-299  
Courts, p. 323 ; *Idem*, p. 326 ; Discharge, p. 364 ; Jurisdiction, p. 473 ; Jury Trial, p. 474.
- ROBINSON *et al.* *v.* PESANT *et al.*.....8-426  
Discharge, p. 354 ; Pleading, p. 529.
- ROCKWELL & WOODRUFF.....4-243  
Discharge, p. 356 ; Fifty per Cent., p. 408.
- ROGERS.....3-564  
Books of Account, p. 271 ; Discharge, p. 357 ; *Idem*, p. 367 ; Fraud, p. 419 ; Trader, p. 661.
- ROGERS.....10-444  
Commencement of Proceedings, p. 282 ; Construction, p. 299 ; Order, p. 515.
- ROGERS & CORYELL, MIERS.....2-397  
Acts of Bankruptcy, p. 177 ; Chattel Mortgage, p. 276 ; Fraud, p. 423.
- ROGERS *v.* WINSOR.....6-246  
Assignee, p. 230 ; *Idem*, p. 231 ; Bill in Equity, p. 269 ; Books of Account, p. 272 ; Practice, p. 547.
- ROLLO, DRAKE *v.*.....4-689  
Mutual Debts, p. 509 ; Set-off, p. 629.
- ROLLO, HITCHCOCK *v.*.....4-690  
Mutual Debts, p. 509 ; Set-off, p. 629.
- ROONEY, C. I.....6-163  
Evidence, p. 385 ; Four and Six Months, p. 415 ; Fraud, p. 429 ; Judicial Proceedings, p. 462 ; Transfer, p. 662.
- ROSE, LYON & Co.....3-265  
Rent, p. 605.
- ROSENBERG, ISRAEL.....3-130  
Assignment, p. 252 ; Chattel Mortgage, p. 277 ; Mortgage, p. 399 ; Proceedings in Bankruptcy, p. 568.
- ROSENBERG, MYRON.....2-236  
Crit., p. 35 ; Construction, p. 297 ; Courts, p. 328 ; Fraud, p. 420 ; Penalties, p. 531 ; Provable Debt, p. 582.
- ROSENBERG, MYRON.....3-74  
Attorney and Counsel, p. 263 ; Practice, p. 549.
- ROSENFELD, JR., ISAAC.....1-319  
Advice of Counsel, p. 195 ; After-acquired Property, p. 196 ; Contempt, p. 300 ; Examination, p. 389 ; *Idem*, p. 391 ; *Idem*, p. 392.
- ROSENFELD, JR., ISAAC.....1-575

- Construction, p. 297; Definitions, p. 343; Discharge, p. 358; *Idem*, p. 360; Examination, p. 394; Fraud, p. 419; *Idem*, p. 420; *Idem*, p. 425.
- ROSENFELD, JR., ISAAC.....2-117  
Appropriation of Payment, p. 213; Attorney and Counsel, p. 264; Discharge, p. 366; Evidence, p. 388; Family Expenses, p. 405; Opposition to Discharge, p. 514; Preference, p. 555; *Idem*, p. 556; Specification, p. 634; Wages, p. 672.
- ROSENTHAL, H. & M.....10-191  
Amendment, p. 202; Dividend, p. 376; Stay of Proceedings, p. 638.
- ROSEY.....8-509  
Judgment, p. 456; Priority, p. 565; Provable Debt, p. 583.
- RUDDICK v. BILLINGS.....3-61  
Appeal, p. 210.
- RUEHLE.....2-577  
Deficiency, p. 343; Provable Debt, p. 584; Secured Creditor, p. 624.
- RUNDLE & JONES.....2-113  
Courts, p. 329; Fraud, p. 427; Provable Debt, p. 583.
- RUPP.....4-95  
Exemption, p. 401.
- RUSSEL v. THOMAS.....10-14  
Constitutionality, p. 297.
- RUTH.....1-154  
Exemption, p. 402; *Idem*, p. 404.
- RYAN & GRIFFIN.....6-235  
Sales, p. 614.
- SABIN, PHILO R.....9-383  
Mortgage, p. 504; Petition, p. 535; *Idem*, p. 536.
- SACCHI.....6-398  
Assignee, p. 250.
- SACCHI.....6-497  
Assignee, p. 250.
- SAFE DEPOSIT AND SAVINGS INST...7-393  
Adjudication, p. 188; Constitutionality, p. 297; Courts, p. 392; Denial of Bankruptcy, p. 345; Jurisdiction, p. 468; *Idem*, p. 470.
- SAINT HELEN'S MILL COMPANY....10-414  
Assignee, p. 240; Corporation, p. 808; Deed, p. 342; Evidence, p. 387; Lien, p. 486; Mortgage, p. 509.
- SALE & PHELAN *et al.*, PENNINGTON v.....1-572
- Disputed Title, p. 371; Judgment, p. 458.
- SALKRY & GERSON, *in re*.....9-107  
Examination, p. 391.
- SALLEE.....2-228  
Schedules, p. 618.
- SALMONS.....2-56  
Encumbered Property, p. 377; Lien, p. 486.
- SAMSON v. BLAKE *et al.*.....6-401  
Appeal, p. 211; Review, p. 610.
- SAMSON v. BLAKE *et al.*.....6-410  
Amendment, p. 205; Appeal, p. 208; Jurisdiction, p. 472; Review, p. 610; Summary Proceedings, p. 648.
- SAMSON v. BURTON *et al.*.....4-1  
Courts, p. 322; *Idem*, p. 334; Stay of Proceedings, p. 641.
- SAMSON v. BURTON *et al.*.....5-459  
Crit., p. 35; Injunction, p. 443.
- SAMSON v. CLARK & BURTON.....6-408  
Courts, p. 327; Examination, p. 388; Order, p. 515; Petition, p. 535; Stay of Proceedings, p. 640.
- SANDS ALE BREWING COMPANY.....6-101  
Assignment, p. 251; Insurance, p. 449; Lien, p. 482; Secured Creditor, p. 620.
- SANFORD.....7-352  
Acts of Bankruptcy, p. 177; Fraud, p. 424; Mortgage, p. 501; Preferred Creditor, p. 564.
- SANFORD, BLODGET &.....5-472  
Assignee, p. 229; *Idem*, p. 250.
- SANGER & SCOTT.....5-54  
Attorney and Counsel, p. 264.
- SAWYER *et al.* v. HOAG *et al.*.....9-145  
Corporation, p. 311; Set-off, p. 629; Stockholder, p. 643.
- SAWYER *et al.* v. TURPIN *et al.*.....5-339  
Conditional Delivery, p. 292; Contract, p. 303; Four and Six Months, p. 414; Insolvency, p. 448; Mortgage, p. 500; *Idem*, p. 508; Ordinary Course of Business, p. 517; Preference, p. 560; Secured Creditor, p. 620; Title, p. 659.
- SCAMMON.....10-66  
Crit., p. 35; Amendment, p. 202; Petition, p. 532; Pleading, p. 537.
- SCAMMON v. COLE *et al.*.....8-393  
Crit., p. 35; Preference, p. 559.
- SCAMMON v. COLE *et al.*.....5-257  
Appeal, p. 210; Courts, p. 326; Equity, p. 380; Jurisdiction, p. 466; Mortgage, p. 499; Preference, p. 560.

- SCAMMON v. KIMBALL.....8-337  
Corporation, p. 311; Set-off, p. 629;  
Stockholder, p. 643; Trustee, p. 666.
- SCHAPTER.....9-324  
Assignee, p. 250.
- SCHEIFFER & GARRETT.....2-591  
Assignee, p. 224; *Idem*, p. 226; *Idem*,  
p. 227; Partnership, p. 529; Vote, p. 671.
- SCHENCK.....5-93  
Discharge, p. 350; Time, p. 657.
- SCHPELER, I. F. & I. D. & L. ROSEN-  
PLAENTER.....3-170  
Adjournment, p. 183; *Idem*, p. 184;  
Meeting of Creditors, p. 495.
- SCHICK.....1-177  
Acts of Bankruptcy, p. 179; Procuring  
and Suffering to be Taken, p. 570; Suf-  
fering Property to be Taken, p. 643.
- SCHNEPF.....1-190  
Injunction, p. 444; Judgment, p. 458.
- SCHUMPERT.....8-415  
Books of Account, p. 272; Debt, p. 342;  
Discharge, p. 353; Fifty per Cent., p.  
409; Growing Crops, p. 431; Schedules,  
p. 619.
- SCHUYLER.....2-549  
Agreement, p. 198; Assignment, p.  
252; Estoppel, p. 382.
- SCHWAB.....2-488  
Cost and Fees, p. 315.
- SCHWARTZ.....4-588  
Exemption, p. 402.
- SCOFIELD & MOORHEAD.....2-1  
Cost and Fees, p. 317; Examination, p.  
387.
- SCOFIELD, D. G. & S. S., & MOOR-  
HEAD.....3-551  
Partnership, p. 529.
- SCOTT, D.....3-742  
Lien, p. 485; Mortgage, p. 507.
- SCOTT & ALLEN, McMILLAN & Co. v. .2-86  
Marshal, p. 493.
- SCOTT & MCCARTY.....4-414  
Secured Creditor, p. 624.
- SCOTT, SANGER &.....5-54  
Attorney and Counsel, p. 264.
- SCOVEL, HALL v.....10-296  
Assignee, p. 247; Bargain and Sale,  
p. 269; Purchaser, p. 588; Rent, p. 607;  
Sales, p. 617; Title, p. 660.
- SCULL, ISAAC, *In re*.....10-165  
Acts of Bankruptcy, p. 179; Adjudica-  
tion, p. 190; Amendment, p. 201; *Idem*,  
p. 203; Carrying on Business, p. 274;  
Creditors, p. 334; Petition, p. 533; Plead-  
ing, p. 537; Procuring and Suffering to  
be Taken, p. 572.
- SEABURY, JR., JAMES M.....10-90  
Adjournment, p. 184; Appearance, p.  
212; Discharge, p. 360.
- SEEVER v. SPINK.....8-213  
Assignee, p. 234; *Idem*, p. 235; Deed,  
p. 343; Four and Six Months, p. 414;  
Mortgage, p. 501.
- SEAY.....4-271  
Fifty per Cent., p. 208.
- SECKENDORF.....1-626  
Adjournment, p. 184; Discharge, p.  
366; *Idem*, p. 367; Examination, p. 388;  
Opposing Discharge, p. 514; Proceedings  
in Bankruptcy, p. 568; Time, p. 656;  
Witness, p. 690.
- SECOND NATIONAL BANK OF LEAVEN-  
WORTH v. HUNT.....4-616  
Crit., p. 35; Agreement, p. 197; Chat-  
tel Mortgage, p. 277; Lien, p. 486;  
Transfer, p. 662.
- SECOR & BLACK.....1-353  
Acts of Bankruptcy, p. 179; Fraud, p.  
422; Insolvency, p. 446; Practice, p. 552;  
Procuring and Suffering to be Taken,  
p. 570.
- SEDGWICK, ASSIGNEE v. CASEY.....4-496  
Limitation, p. 498; Wages, p. 673.
- SEDGWICK v. LYNCH.....8-289  
Fraud, p. 428; Intent, p. 451; Sales,  
p. 615.
- SEDGWICK v. MENCK *et al*.....1-425  
Crit., p. 35; Injunction, p. 446.
- SEDGWICK v. MENCK *et al*.....1-675  
Crit., p. 35; Assignee, p. 280.
- SEDGWICK v. MILWARD.....5-347  
Assignee, p. 235; Cost and Fees, p.  
320.
- SEDGWICK v. PLACE.....1-673  
Crit., p. 35; Assignment, p. 251.
- SEDGWICK v. PLACE.....3-139  
Crit., p. 35.
- SEDGWICK v. PLACE.....3-302  
Assignment, p. 253.
- SEDGWICK v. PLACE.....5-163  
Crit., p. 35; Husband and Wife, p.  
488; Settlement on Wife, p. 631; Wife  
of Bankrupt, p. 678.
- SEDGWICK v. PLACE.....10-28  
Fraud, p. 430; Husband and Wife, p.  
488; Mortgage, p. 509; Secured Creditor,  
p. 626; Settlement on Wife; p. 632.

- SEDGWICK v. WORMSER** .....7-186  
 Fraud, p. 425; Sales, p. 615.
- SEELEY, MYERS v.**.....10-411  
 Assessment on Stock, p. 218; Assignee, p. 234; Corporation, p. 310; Stock, p. 642.
- SELIG** .....1-186  
 Discharge, p. 355; Examination, p. 388; Wife of Bankrupt, p. 676.
- SELICK, PHELPS v.**..... 8-390  
 Contempt, p. 302; Courts, p. 332; Custody of Property, p. 388; Mortgage, p. 505.
- SEYMOUR** .....1-29  
 Crit., p. 35; Commission Merchant, p. 287; Different Districts, p. 347; Fiduciary Debt, p. 406; Habeas Corpus, p. 432; Imprisoned Debtor, p. 439.
- SHAFFER v. FRITCHERY & THOMAS** ..4-548  
 Bonus, p. 270; Fraud, p. 422; Insolvency, p. 447; Provable Debt, p. 583; Suspension of Payment, p. 654.
- SHAFFER & HAMILTON**.....2-586  
 Bankrupt Court, p. 268; Surrender, p. 650.
- SHANNON et al., KEENAN v.**.....9-441  
 Injunction, p. 445.
- SHARKEY, GOODWIN v.**.....3-558  
 Arrest, p. 215; Fraud, p. 417.
- SHEA & BOYLE, HEINSHEIMER et al.**  
*v.*.....3-187  
 Burden of Proof, p. 278; Commercial Paper, p. 285; Fraud, p. 429.
- SHEARMAN v. BINGHAM**.....5-34  
 Different Districts, p. 348.
- SHEARMAN v. BINGHAM**.....7-490  
 Assignee, p. 236; *Idem*, 237; Courts, p. 324; Jurisdiction, p. 466.
- SHEEHAN, D.**.....8-345  
 Dividend, p. 375; Execution, p. 397; Judgment, p. 462; Provable Debt, p. 583; Remedy, p. 604; Writ of Error, p. 681.
- SHEEHAN, D.**.....8-353  
 Discontinuance of Proceedings, p. 369.
- SHEPARD, THOS. S.** .....3-172  
 Partnership, p. 520; Practice, p. 558.
- SHEPPARD, LUTHER**.....1-439  
 Crit., p. 35; Discharge, p. 364; Filing Proof of Debt, p. 410; Limitation, p. 489; Opposing Discharge, p. 514; Proof of Debt, p. 573; *Idem*, p. 575; Provable Debt, p. 585; United States Commissioner, p. 667.
- SHERBURNE** .....1-558  
 Arrangement, p. 214; Discontinuance of Proceedings, p. 367.
- SHERRY**.....8-142  
 Adjournment, p. 183; Jury Trial, p. 474; Pleading, p. 541.
- SHERWOOD**.....1-344  
 Cost and Fees, p. 319; Examination, p. 395; Meeting of Creditors, p. 405; Notice, p. 512; Practice, p. 549.
- SHIELDS**.....1-603  
 Assignee, p. 246; Exemption, p. 403.
- SHIP EDITH**.....6-449  
 Constitutionality, p. 297; Lien, p. 485; Mortgage, p. 507; Proceedings *in rem*, p. 569.
- SHOWER, I. L.**.....6-586  
 Crit., p. 35; Discharge, p. 357.
- SHUEY, W. H., in re.**.....9-526  
 Property Unwarrantably Taken, p. 579.
- SHUMAN v. STRAUSS**.....10-300  
 Debt, p. 340; Discharge, p. 358; Fraud, p. 423; Judgment, p. 458.
- SHUMATE & BLYTHE v. HAWTHORN**..3-228  
 Jury Trial, p. 474; Partnership, p. 520.
- SIDDLE, CHANDLER v.**.....10-236  
 Action, p. 182; Corporation, p. 311; Court, p. 330; Jurisdiction, p. 463; Stock, p. 642.
- SIDLE**.....2-220  
 Breach of Promise, p. 272; Discharge, p. 364; Fraud, p. 419.
- SIGSBY v. WILLIS**.....3-207  
 Partnership, p. 525; Provable Debt, p. 584.
- SILVERMAN**.....4-522  
 Bankrupt Act, p. 267; Distribution, p. 372; Pleading, p. 538; Proof of Debt, p. 579.
- SIME & Co.**.....7-407  
 Disqualification of Judge, p. 371; Judge, p. 455.
- SIMMONS**.....10-254  
 Agent, p. 197; Amendment, p. 204; Jurisdiction, p. 473; Parties, p. 519; Practice, p. 554; Verification, p. 670.
- SIMPSON**.....2-47  
 Discharge, p. 365; Imprisoned Debtor, p. 439.
- SIMS, BRYAN v.**.....10-540  
 Courts, p. 331; Homestead, p. 433; Jurisdiction, p. 472.
- SIXPENNY SAVINGS BANK v. ESTATE OF STUYVESANT BANK** .....10-399

- Bankrupt Act, p. 268; Distribution, p. 372; Saving Banks, p. 617.
- SKELLY.....5-214  
Amount of Indebtedness, p. 207; Construction, p. 298; Cost and Fees, p. 316; Evidence, p. 385; Jurisdiction, p. 463; Payment, p. 531; Pleading, p. 540; Waiver, p. 674.
- SLEEK *et al. v. TURNER*.....10-580  
Four and Six Months, p. 415; Judgment, p. 460; Preference, p. 562.
- SLICHTER, CATHARINE H. & DAVID P. SLICHTER.....2-336  
Acts of Bankruptcy, p. 173; Married Woman, p. 491.
- SMITH, JOHN O.....1-243  
Assignee, p. 224.
- SMITH, JOHN O.....2-297  
Attorney and Counsel, p. 260; Practice, p. 552.
- SMITH, JOHN P. & JAMES.....1-599  
Judgment, p. 459; Lien, p. 482.
- SMITH, JOHN W.....8-401  
Amendment, p. 200; Congress, p. 294; Contract, p. 304; Exemption, p. 401; Lien, p. 481; Uniformity of Act, p. 667.
- SMITH, S. T.....3-377  
Acts of Bankruptcy, p. 174; Assignment, p. 254; Intent, p. 451.
- SMITH & BICKFORD.....5-20  
Discharge, p. 351; Pleading, p. 543; Specification, p. 635.
- SMITH *et al.*, BROMBEY *v.*.....5-152  
Assignee, p. 233; *Idem*, p. 234; Proceedings in Bankruptcy, p. 569; Proof of Debt, p. 575; Usury, p. 668.
- SMITH, JERVIS *v.*.....3-594  
Dividend, p. 375; Equity, p. 380; Marshaling of Assets, p. 494; Secured Creditor, p. 621.
- SMITH, KEHR *v.*.....10-49  
Consideration, p. 296; Creditor, p. 385; Distribution, p. 372; Husband and Wife, p. 438; Married Woman, p. 492; Settlement on Wife, p. 630.
- SMITH, LINN *et al. v.*.....4-46  
Claim, p. 280; Petition, p. 582; Provable Debt, p. 585.
- SMITH *et al.*, MARTIN, ETC., *v.*.....4-274  
Fraud, p. 423; Limitation, p. 490.
- SMITH *v.* BUCHANAN.....4-397  
Crit., p. 35; Assignee, p. 231; Creditors, p. 338; Proceedings in State Courts, p. 570; Procuring and Suffering to be Taken, p. 571; Suffering Property to be Taken, p. 646; Title, p. 658.
- SMITH, BUCHANAN *v.*.....7-513  
Procuring and Suffering to be Taken, p. 571.
- SMITH *v.* CRAWFORD.....9-38  
Limitation, p. 489.
- SMITH *v.* KEHR *et al.*.....7-97  
Crit., p. 35; Consideration, p. 295; Distribution, p. 372; Fraud, p. 431; Homestead, p. 433; Sales, p. 615; Secured Creditor, p. 624; Setting aside Conveyance, p. 630; Settlement on Wife, p. 632.
- SMITH, ASSIGNEE, *v.* LITTLE.....9-111  
Fraud, p. 425; Jurisdiction, p. 467; Preference, p. 558; Secured Creditor, p. 623.
- SMITH *et al. v.* MANUFACTURER'S NATIONAL BANK.....9-122  
Bankrupt Act, p. 268; Construction, p. 299; National Bank, p. 510.
- SMITH *v.* MASON.....6-1  
Crit., p. 35; Assignee, p. 240; Disputed Title, p. 371; Possession, p. 545; Stranger, p. 644; Summary Proceedings, p. 648.
- SMITH *v.* MCLEAN.....10-260  
Chattel Mortgage, p. 278; Fraud, p. 424; Interest, p. 453; Mortgage, p. 500.
- SMITH, VINCENT M., *v.* JOSEPH N. ELY *et al.*.....10-554  
Assignee, p. 235; Chattel Mortgage, p. 278; Setting aside Conveyance, p. 630.
- SNEDAKER.....3-629  
Secured Creditor, p. 621; *Idem*, p. 624.
- SNEDAKER.....4-168  
Assets, p. 221; Mortgage, p. 504; *Idem*, p. 507.
- SNOW *et al.*, ELFELT *et al. v.*.....6-57  
Action, p. 181; Composition, p. 289; Fraud, p. 428; Representation, p. 607.
- SOHOO.....3-215  
Fraud, p. 429.
- SOLDIERS' BUSINESS MESSENGER AND DISPATCH COMPANY.....2-519  
Chattel Mortgage, p. 279; Mortgage, p. 505; Practice, p. 551.
- SOLDIERS' BUSINESS MESSENGER AND DISPATCH COMPANY, ALLEN *v.*.....4-537  
Crit., p. 30; Corporation, p. 308; Stay of Proceedings, p. 638.



- SOLIS .....3-761  
 SOLIS .....4-68  
     Examination, p. 390 ; Verification, p. 669.  
 SOLOMON.....2-285  
     Crit., p. 36 ; Books of Account, p. 271 ; Discharge, p. 352 ; Trader, p. 661.  
 SOLOMON, JOSEPH.....10-9  
     Exemption, p. 404 ; Homestead, p. 436 ; Waiver, p. 674.  
 SON.....1-310  
     Meeting of Creditors, p. 496 ; Pleading, p. 543 ; Specification, p. 634.  
 SONTAG & ELDRIDGE, HYDE *v.*.....8-225  
     Four and Six Months, p. 414 ; Limitation, p. 488.  
 SOUTHER.....9-502  
     Commercial Paper, p. 286 ; Provable Debt, p. 581.  
 SOUTHERN MINNESOTA R. R. Co....10-86  
     Commercial Paper, p. 287 ; Corporation, p. 310 ; Evidence, p. 386.  
 SOUTH SIDE R. R. COMPANY.....10-274  
     Attorney and Counsel, p. 261 ; Contempt, p. 302 ; Injunction, p. 444.  
 SPARHAWK, BURPER *et al. v.*.....4-684  
 SPAULDING *v.* MCGOVERN.....10-188  
     Jurisdiction, p. 471 ; Misjoinder, p. 498 ; Parties, p. 519.  
 SPEYER, F. & A. ....6-255  
     Contempt, p. 301.  
 SPICER & PECKHAM *versus* WARD & TROW.....3-512  
     Assignment, p. 254 ; Estoppel, p. 382.  
 SPINK, SEAVER *v.*.....8-218  
     Assignee, p. 234 ; *Idem*, p. 235 ; Deed, p. 343 ; Four and Six Months, p. 414 ; Mortgage, p. 501.  
 STANSELL.....6-183  
     Adjudication, p. 192 ; Petition, p. 536 ; Secured Creditor, p. 623.  
 STAPLINE.....9-142  
     Collection of Debts, p. 282 ; Commercial Paper, p. 286 ; Pleading, p. 549 ; Usury, p. 668.  
 STARK, GRAHAM *v.*.....8-357  
     Crit., p. 33 ; Agent, p. 196 ; Husband and Wife, p. 436 ; Preference, p. 558 ; Secured Creditor, p. 625.  
 STARKWEATHER, ASSIGNEE, *v.* CLEVELAND INSURANCE CO. ....4-341  
     Assignment, p. 251 ; Insurance, p. 449 ; Transfer, p. 662.  
 STATE OF GEORGIA, STOKES *v.*.....9-191  
     Lien, p. 487 ; Taxes, p. 655.  
 STATE OF NORTH CAROLINA *v.* TRUSTEES OF UNIVERSITY & C. DEWING *et al.*.....5-466  
     Courts, p. 325 ; Jurisdiction, p. 471.  
 STEADMAN.....8-319  
     Contempt, p. 302 ; Custody of Property, p. 338.  
 STEINMAN.....10-214  
     Amendment, p. 202 ; Practice, p. 554.  
 STEPHENS, E. R. ....6-533  
     Fraud, p. 426 ; Mortgage, p. 501.  
 STEPHENSON *v.* JACKSON .....9-255  
     Distribution, p. 378 ; Partnership, p. 523.  
 STERNS, PHELPS *v.*.....4-34  
     Fraud, p. 423.  
 STETSON .....3-726  
 STEVENS.....4-367  
     Attachment, p. 257 ; Judgment, p. 460 ; Preference, p. 555 ; *Idem*, p. 556 ; Proof of Debt, p. 575.  
 STEVENS, R. ....5-112  
     Partnership, p. 528.  
 STEVENS, W. S. ....5-298  
     Attachment, p. 259 ; Commencement of Proceedings, p. 282 ; Exemption, p. 401.  
 STEVENS, APPLETON *v.*.....10-515  
     Four and Six Months, p. 418 ; Receiver, p. 594.  
 STEWART, R. R. ....3-108  
     Proceedings in Bankruptcy, p. 568.  
 STEWART, T. R. ....1-278  
     Mortgage, p. 507 ; Provable Debt, p. 584 ; Secured Creditor, p. 623.  
 STEWART *v.* EMERSON.....8-462  
     Assumpsit, p. 256 ; Discharge, p. 355 ; Fraud, p. 428 ; Pleading, p. 539.  
 STEWART *v.* ISIDORE.....1-485  
     Creditors, p. 336 ; Discharge, p. 363 ; Lien, p. 487.  
 STILLWELL.....2-526  
     Arrangement, p. 214 ; Committee of Creditors, p. 287 ; Trustee, p. 665.  
 STILLWELL, J. R. ....7-226  
     Assignee, p. 225 ; Homestead, p. 434 ; Vote, p. 671.  
 STODDARD *v.* LOCKE *et al.*.....9-71  
     Foreclosure, p. 412 ; Lien, p. 481 ; Proceedings *in rem*, p. 569.

- STODDARD, WILSON, ETC., *v.*.....4-254  
Practice, p. 551.
- STOKES.....1-489  
Assignee, p. 250.
- STOKES.....2-212  
Discharge, p. 358; Fraud, p. 420.
- STOKES *v.* STATE OF GEORGIA.....9-191  
Lien, p. 487; Taxes, p. 655.
- STOWE *ex parte* GODFREY.....6-429  
Mortgage, p. 508; Preference, p. 560;  
Secured Creditor, p. 621.
- STRACHAN.....3-601  
Discharge, p. 365.
- STRANAHAN, ASSIGNEE OF BANNISTER, *v.*  
GREGORY & Co.....4-427  
Insolvency, p. 447.
- STRANGE, KELLY *v.*.....3-8  
Dower, p. 376.
- STRAUSS.....2-48  
Courts, p. 321; Depositions, p. 346;  
Petition, p. 511; Proof of Debt, p. 578;  
Residence, p. 608.
- STREET, BUCKNER *v.*.....7-255  
Interpretation, p. 453; Slaves, p.  
633.
- STREET *v.* DAWSON.....4-207
- STUART *v.* AUMUELLER *et al.*.....8-541  
Demurrer, p. 345; Pleading, p. 539.
- STUART *v.* HINES *et al.*.....6-416  
Assignee, p. 288; Courts, p. 331; Lien,  
p. 479; Order, p. 515; Partnership, p.  
526; Service of Papers, p. 628.
- STUBBS.....4-376  
Crit., p. 36; Assignment, p. 255.
- STUMP, BURKHOLDER *et al.* *v.*.....4-597
- STURGEON.....1-498  
Assignee, p. 228; Certifying Questions  
p. 275.
- STUYVESANT BANK.....6-272  
Assignee, p. 223; Committee of Cred-  
itors, p. 287; Trustee, p. 665.
- STUYVESANT BANK.....7-445  
Attorney and Counsel, p. 262; Exami-  
nation, p. 392; Witness, p.
- STUYVESANT BANK.....9-318  
Preference, p. 566.
- SUMMERS.....3-84  
Homestead, p. 434.
- SUTHERLAND.....1-531  
Crit., p. 36; Confession of Judgment,  
p. 293; Denial of Bankruptcy, p. 345;  
Pleading, p. 537; *Idem*, p. 538.
- SUTHERLAND.....3-314  
Debt, p. 440.
- SUTHERLAND *v.* DAVIS.....10-424  
Assignment, p. 252; Bankrupt, p. 265;  
Pleading, p. 537; Title, p. 660.
- SUTHERLAND *et al.* *v.* LAKE SUP. SHIP  
CANAL, R. R. & IRON Co.....9-298  
Equity, p. 381; Foreclosure, p. 412;  
Lien, p. 486; Parties, p. 518; Pleading,  
p. 540; Sales, p. 616.
- SWAN, MEADBURY *v.*.....8-537  
Discharge, p. 351; Equity, p. 381;  
Laches, p. 476; Pleadings, p. 539.
- SWARTZ, MORRIS *v.*.....10-305  
Assignee, p. 224; *Idem*, p. 248; Claim,  
p. 280; Courts, p. 330; Evidence, p.  
387; Judicial Notice, p. 462; Purchaser,  
p. 588. •
- SWEATT *v.* BOSTON, HARTFORD & ERIE  
R. R. Co. *et al.*.....5-234  
Crit., p. 36; Constitutionality, p. 296;  
Construction, p. 298; Courts, p. 327;  
Practice, p. 552.
- SWEET *et al.*.....9-48  
Assignee, p. 249; Cost and Fees, p.  
314; Sales, p. 616.
- SWIFT.....7-591  
Amendment, p. 200; Debt, p. 342;  
Time, p. 657.
- SWOPE *et al.* *v.* ARNOLD.....5-148  
Execution, p. 396; Judgment, p. 459.
- SYMONDS *v.* BARNES.....6-377  
Schedule, p. 619.
- TALBOT.....2-280  
Crit., p. 36; Cost and Fees, p. 317;  
Marshal, p. 493.
- TALCOTT, *Ex parte*, *In re* SOUTHER.....9-503  
Endorser, p. 378; Trustee, p. 666.
- TALLMAN.....1-463  
Crit., p. 36; Debt, p. 340; Evidence,  
p. 383; Fraud, p. 420.
- TALLMAN.....1-540  
Discharge, p. 362; Specification, p. 634;  
Time, p. 656.
- TANNER.....1-316  
Crit., p. 36; Attorney and Counsel, p.  
262; Examination, p. 392.
- TAPPAN, BATES *v.*.....3-647  
Four and Six Months, p. 413; Judg-  
ment, p. 456.
- TAYLOR.....3-157  
Homestead, p. 433.
- TAYLOR, PENNY *v.*.....10-200  
Courts, p. 321; *Idem*, p. 329; Enjoin-

- ing Proceedings in State Court, p. 379 ; Execution, p. 397 ; Exemption, p. 400 ; Fraud, p. 421 ; Homestead, p. 433 ; Injunction, p. 443 ; Jurisdiction, p. 467 ; *Idem*, p. 472 ; Stay of Proceedings, p. 641.
- TAYLOR *et al.*, REED BROS. & CO. *v.*** 4-710  
State Insolvent Laws, p. 636.
- TAYLOR *v.* RASCH & BERNART**.....5-399  
Demurrer, p. 344 ; Equity, p. 381 ; Fraud, p. 430 ; Partnership, p. 524 ; Pleading, p. 538.
- TEN EYCK & CHOATE**.....7-26  
Assignee, p. 246 ; Rent, p. 606.
- TENNEY & GREGORY *v.* COLLINS**.....4-477  
Evidence, p. 384 ; Specification, p. 635 ; Wife of Bankrupt, p. 678.
- TENTH NATIONAL BANK, WARREN & ROW *v.***.....5-479  
Crit., p. 36 ; Composition, p. 289.
- TENTH NATIONAL BANK *et al.*, WARREN *v.***.....7-481
- TERRELL, BROCK *v.***.....2-643  
Lien, p. 484 ; Rent, p. 605.
- TERRY & CLEAVER**.....4-126  
Limitation, p. 488 ; Practice, p. 552 ; Priority, p. 566 ; Time, p. 657.
- TESSON, E. P. & E. M., *In re.***.....9-378  
Provable Debt, p. 584 ; Trust, p. 664.
- THE ANSONIA BRASS & COPPER CO. *v.* THE NEW LAMP CHIMNEY**.....10-355  
Corporation, p. 309 ; Creditors, p. 334 ; Debt, p. 340 ; Judgment, p. 462.
- THE BANK OF NORTH CAROLINA, WILSON & SHOVER *v.***.....10-290  
Creditors, p. 334.
- THE BRADY'S BEND IRON CO., M. & M. NATIONAL BANK *v.***.....5-491  
Assignee, p. 223.
- THE CENTRAL BANK**.....6-207  
Action, p. 182 ; Court, p. 332.
- THE CHARTERED BANK OF INDIA, AUSTRALIA, AND CHINA *v.* EVANS *et al.***.....4-186  
Assets, p. 221 ; Fraud, p. 426 ; Secured Creditor, p. 620.
- THE HERCULES MUTUAL LIFE ASSURANCE SOCIETY OF THE UNITED STATES**.....6-388  
Amendment, p. 199 ; Commercial Paper, p. 284 ; *Idem*, p. 286 ; Corporation, p. 312 ; Suspension of Payment, p. 654.
- THE IRON MOUNTAIN CO.**.....4-646  
Foreclosure, p. 411 ; Lien, p. 484 ; Provable Debt, p. 585.
- THE WARREN SAVINGS BANK *v.* PALMER & CO.**.....10-239  
Amendment, p. 202 ; Bankrupt, p. 266 ; Denial of Bankruptcy, p. 346 ; Jury Trial, p. 474.
- THOMAS**.....3-38  
Injunction, p. 442 ; Practice, p. 550.
- THOMAS, RUSSELL *v.***.....10-14  
Constitutionality, p. 297.
- THOMAS, UNITED STATES *v.***.....7-188  
Arrest, p. 217 ; Fraud, p. 421.
- THOMPSON**.....1-323  
Adjournment, p. 184 ; Examination, p. 394.
- THOMPSON & MCCLALLEN**.....3-185  
Acts of Bankruptcy, p. 175 ; *Idem*, p. 180 ; Fraud, p. 429 ; Suspension of Payment, p. 653.
- THOMPSON, MEAD *v.***.....8-529  
Appeal, p. 211.
- THORNER, AHL & BUCHMAN *v.***.....8-118  
Endorser, p. 378 ; Fraud, p. 425 ; Preference, p. 556.
- THORNHILL *et al.* *v.* BANK OF LOUISIANA**.....3-435  
Crit., p. 36 ; Corporation, p. 306 ; *Idem*, p. 309 ; Courts, p. 330 ; Jurisdiction, p. 464.
- THORNHILL *et al.* *v.* BANK OF LOUISIANA**.....5-367  
Crit., p. 36 ; Bankrupt Act, p. 268 ; Parties, p. 519 ; Review, p. 610.
- THORNHILL *et al.* *v.* BANK OF LOUISIANA**.....5-377  
Appeal, p. 212 ; Stay of Proceedings, p. 637.
- THORNHILL & CO. *v.* LINK**.....8-521  
Four and Six Months, p. 415 ; Fraud, p. 429 ; Time, p. 658.
- THORNHILL *et al.*, MORGAN *et al.* *v.***.....5-1  
Appeal, p. 208 ; Courts, p. 328 ; Equity, p. 380.
- THORNTON**.....2-189  
Crit., p. 36 ; Assignee, p. 245 ; Exemption, p. 403 ; Money, p. 498.
- THROCKMORTON *et al.*, UNITED STATES *v.***.....8-309  
Construction, p. 298 ; Contingent Liability, p. 302 ; Discharge, p. 366 ; Surety, p. 649.
- TIFFANY *v.* BOATMAN'S SAVING INSTITUTION**.....9-245  
Commercial Paper, p. 285 ; Contract,

- p. 304 ; Corporation, p. 312 ; Evidence, p. 886 ; Loans, p. 491 ; Preference, p. 558 ; Secured Creditor, p. 622 ; Usury, p. 668.
- TIFFANY v. LUCAS**.....8-49  
Acts of Bankruptcy, p. 178 ; Sales, p. 615.
- TIFFANY v. THE BOATMAN'S SAVING INSTITUTION**.....9-245  
Assignee, p. 240.
- TONKIN & TREWARTHA**.....4-52  
Surrender, p. 651.
- TOOF, PHILLIPS & Co. MARTIN, ETC. v.**4-488  
Crit., p. 34 ; Burden of Proof, p. 272 ; Contemplation of Bankruptcy, p. 800 ; Evidence, p. 384 ; Ignorantia Legis, p. 439 ; Insolvency, p. 447 ; Intent, p. 451 ; Ordinary Course of Business, p. 517 ; Preference, p. 563.
- TOOF et al. v. MARTIN**.....6-49  
Burden of Proof, p. 273 ; Fraud, p. 426 ; Insolvency, p. 448 ; Ordinary Course of Business, p. 517 ; Preference, p. 562.
- TOWN, RICHARD, MARY, AND S. R.**8-38  
Provable Debt, p. 588 ; Spirituous Liquors, p. 636.
- TOWN, RICHARD, MARY, AND S. R.**8-40  
Interest, p. 452 ; Surplus, p. 656.
- TOWNSEND**.....1-216  
Clerk, p. 281 ; Evidence, p. 888 ; Notice, p. 512.
- TRACY, WILLSON, STRONG & ORVIS**2-298  
Discharge, p. 356 ; Fiduciary Debt, p. 407 ; Specification, p. 634.
- TRADER'S NATIONAL BANK OF CHICAGO v. CAMPBELL**.....6-353  
Assignee, p. 234 ; *Idem*, p. 236 ; Confession of Judgment, p. 294 ; Creditors, p. 336 ; Execution, p. 399 ; Parties, p. 518 ; Preference, p. 555.
- TREAT**.....10-310  
Arrangement, p. 214 ; Committee of Creditors, p. 288 ; Compensation, p. 288 ; Cost and Fees, p. 316.
- TRIM ex parte MARSHALL**.....5-23  
Lien, p. 484 ; Rent, p. 605.
- TROWBRIDGE**.....9-274  
Arrangement, p. 214.
- TROY WOOLEN Co.**.....4-629  
Advance Bid, p. 192 ; Assignee, p. 242 ; Practice, p. 552 ; Setting aside Conveyance, p. 631.
- TROY WOOLEN Co.**.....6-16  
Appeal, p. 211 ; Rehearing, p. 603.
- TROY WOOLEN Co.**.....8-412  
Agent, p. 196 ; Contract, p. 304 ; Cost and Fees, p. 316 ; Creditors, p. 334 ; Set-off, p. 629.
- TRUAX, THE MERCHANTS' NATIONAL BANK OF HASTINGS v.**1-545  
Mortgage, p. 500.
- TRUAX, TUTTLE v.**1-601  
Mortgage, p. 508 ; Pre-existing Indebtedness, p. 554 ; Secured Creditor, p. 621.
- TRUSTEES OF UNIVERSITY AND C. DEWEY et al., STATE OF NORTH CAROLINA v.**5-466  
Courts, p. 325 ; Jurisdiction, p. 471.
- TULLEY**.....3-83  
Costs and Fees, p. 813 ; *Idem*, p. 814.
- TULLIS, COOK et al., ETC., v.**9-433  
Preference, p. 559 ; Substitution, p. 645 ; Trust, p. 665.
- TURNER, SLEEK v.**10-580  
Four and Six Months, p. 415 ; Judgment, p. 460 ; Preference, p. 562.
- TURPIN et al., SAWYER et al. v.**5-339  
Conditional Delivery, p. 292 ; Contract, p. 308 ; Four and Six Months, p. 414 ; Insolvency, p. 448 ; Mortgage, p. 500 ; *Idem*, p. 508 ; Ordinary Course of Business, p. 517 ; Preference, p. 560 ; Secured Creditor, p. 620 ; Title, p. 659.
- TUTTLE, GOODALL v.**7-193  
Crit., p. 33 ; Assignee, p. 237 ; Construction ; p. 299 ; Courts, p. 329 ; Different Districts, p. 348 ; Interpretation, p. 458 ; Jurisdiction, p. 466 ; *Idem*, p. 472.
- TUTTLE v. TRUAX**.....1-601  
Mortgage, p. 508 ; Pre-existing Indebtedness, p. 554 ; Secured Creditor, p. 621.
- TYLER**.....4-104  
Books of Account, p. 271.
- TYLER, WADSWORTH, ETC., v.**2-316  
Action, p. 182 ; Assignee, p. 235 ; *Idem*, p. 236 ; Preference, p. 562.
- TYRRELL**.....2-200  
Specification, p. 634.
- ULRICH et al.**.....3-133  
Appearance, p. 212 ; Jurisdiction, p. 472 ; Summary Proceedings, p. 648.
- ULRICH et al.**.....8-15

- Contempt, p. 301; Equity, p. 381; Injunction, p. 442; Stay of Proceedings, p. 640.
- UNGEWITTER *v.* VON SACHS *et al.*.....3-723  
Trust, p. 663.
- UNION NATIONAL BANK OF PITTSBURGH, PURVIANCE *v.*.....8-447  
Assignee, p. 231; *Idem*, p. 232; Title, p. 659.
- UNION PACIFIC RAILROAD Co.....10-178  
Acts of Bankruptcy, p. 174; *Idem*, p. 177; Assignment, p. 254; Common Carrier, p. 288; Corporation, p. 307; Mortgage, p. 501; *Idem*, p. 503; Ordinary Course of Business, p. 517.
- UNITED STATES *v.* CLARK.....4-59  
Indictment, p. 440; Misdemeanor, p. 498.
- UNITED STATES *v.* GEARY.....4-534  
Bail, p. 264; Misdemeanor, p. 498.
- UNITED STATES *v.* HERRON.....9-535  
Discharge, p. 366; Surety, p. 649.
- UNITED STATES *v.* PRESCOTT.... ..4-112  
Indictment, p. 440; Misdemeanor, p. 497; Pleading, p. 542.
- UNITED STATES *v.* PUSEY.....6-284  
Constitutionality, p. 297; Fraud, p. 418.
- UNITED STATES *v.* THOMAS.....7-188  
Arrest, p. 217; Fraud, p. 421.
- UNITED STATES *v.* THROCKMORTON *et al.*.....8-309  
Construction, p. 298; Contingent Liability, p. 302; Discharge, p. 366; Surety, p. 649.
- UNIVERSITY AND C. DEWEY *et al.*, STATE OF NORTH CAROLINA TRUSTEES OF *v.*.....5-466
- UPTON *v.* BURNHAM.....8-221  
Assignee, p. 234; Corporation, p. 308; Stockholder, p. 643; Waiver, p. 674.
- UPTON *v.* HANSBROUGH.....10-369  
Assessment on Stock, p. 218; Assets, p. 221; Bankrupt Court, p. 269; Corporation, p. 310; *Idem*, p. 312; Representations, p. 607; Stockholder, p. 643; *Idem*, p. 644.
- VALK, A. & I. S. ....3-278  
Habeas Corpus, p. 432.
- VALLIQUETTE.....4-307  
Acts of Bankruptcy, p. 178; Sales, p. 613.
- VAN NOSTRAND *v.* BARR *et al.*.....2-483  
Jurisdiction, p. 467.
- VAN NOSTRAND, MINON *v.*.....4-108  
Arrest, p. 216; Stay of Proceedings, p. 641.
- VAN RIPER, G. & I. I.....6-573  
Assets, p. 220; Fifty per Cent., p. 408.
- VAN TUYL.....1-636  
Examination, p. 393; Proof of Debt, p. 579.
- VAN TUYL.....2-70  
Cost and Fees, p. 320; Discharge, p. 367; Examination, p. 388; *Idem*, p. 392; Wife of Bankrupt, p. 677.
- VAN TUYL.....2-579  
Service of Papers, p. 627; Wife of Bankrupt, p. 677.
- VETTERLEIN.....4-599  
Examination, p. 395.
- VETTERLEIN, T. H. *et al.*.....6-518  
Creditors, p. 386.
- VICKERY.....3-696  
Judgment, p. 460; Merger, p. 496; Provable Debt, p. 583.
- VINTON.....7-138  
Discharge, p. 357; Fifty per Cent., p. 408.
- VOGEL, H. ....2-427  
Crit., p. 36; Attachment, p. 256; Claim and Delivery, p. 281.
- VOGEL, H. ....3-198  
Claim and Delivery, p. 281.
- VOGEL, H. ....5-393  
Bankrupt, p. 265; Examination, p. 393.
- VOGLE *v.* LATHROP.....4-439  
Agent, p. 196; Confession of Judgment, p. 298; Fraud, p. 422; Preference, p. 562; Secured Creditor, p. 625.
- VOGLER.....8-132  
Exemption, p. 400; Homestead, p. 433.
- VON SACHS *et al.*, UNGEWITTER *v.*...3-723  
Trust, p. 663.
- VOORHEES *v.* FRISBIE.....8-152  
Assignee, p. 238; Courts, p. 332.
- WADSWORTH, ASSIGNEE OF TREADWELL, *v.* TYLER.....2-316  
Action, p. 182; Assignee, p. 235; *Idem*, p. 236; Preference, p. 562.
- WAGER & FALES, HALL *v.*.....5-181

- Bankrupt Act, p. 267; Contemplation of Bankruptcy, p. 300; Fraud, p. 427; Insolvency, p. 447; Mortgage, p. 500; Preference, p. 559; Presumption of Law, p. 564.
- WAITE & CROCKER.....1-378  
Mortgage, p. 499; Partnership, p. 527; *Idem*, p. 529.
- WAITE & CROCKER..... 2-452  
Cost and Fees, p. 319.
- WALBRUN & CO., BABBITT *v.*.....4-121  
Evidence, p. 384; Fraud, p. 424; Notice, p. 573; Ordinary Course of Business, p. 516; Sales, p. 613.
- WALBRUN & CO., BABBITT *v.*.....6-359  
Crit., p. 30; Assignee, p. 233.
- WALBRUN & CO. *v.* BABBITT.....9-1  
Burden of Proof, p. 272; Fraud, p. 424; Notice, p. 513; Purchaser, p. 588.
- WALKER, A. I.....1-335  
Oath, p. 513.
- WALKER, WM. A.....1-318  
Arrest, p. 216; Habeas Corpus, p. 432; Impersonal Debtor, p. 439.
- WALKER, WM. S.....1-386  
Jurisdiction, p. 466; Residence, p. 608.
- WALKER *v.* BARTON.....3-265  
Rent, p. 605.
- WALKER *et al.*, COMMONWEALTH *v.*...4-672  
Conspiracy, p. 296; Courts, p. 329; Criminal Proceedings, p. 338; Indictment, p. 440; Pleading, p. 542.
- WALLACE.....2-134  
Crit., p. 36; Equity, p. 380; Execution, p. 397; Injunction, p. 442.
- WALLACE *v.* CONRAD.....3-41  
Assignee, p. 441; Subrogation, p. 645.
- WALLER, BIGLER *v.*.....4-292  
Time, p. 657; War, p. 675.
- WALTON.....1-557  
Assignee, p. 246; Rent, p. 604.
- WALTON.....4-467  
Intent, p. 451; Preference, p. 556; Surrender, p. 651.
- WALTON, MOORE *et al.* *v.*.....9-402  
Partnership, p. 526.
- WARD, ALLEN *v.*.....10-285  
Corporation, p. 309; Injunction, p. 442; Judgment, p. 457; Stockholder, p. 643.
- WARD, GEORGE S.....9-349  
Attachment, p. 259; Cost and Fees, p. 315; Lien, p. 479.
- WARD & TROW, SPICER & PECKHAM *v.*.....3-512  
Assignment, p. 254; Estoppel, p. 382.
- WARNER, J. H. *et al.*.....7-47  
Discontinuance of Proceedings, p. 368; Evidence, p. 385; Partnership, p. 525.
- WARNER, S. P. *et al.*.....5-414  
Acts of Bankruptcy, p. 177; Bankrupt Act, p. 267; Discharge, p. 364; Lien, p. 480; Preference, p. 555.
- WARREN *v.* DELAWARE, LACKAWANNA & WESTERN R. R. Co.....7-451
- WARREN & ROWE *v.* TENTH NATIONAL BANK *et al.*.....5-479  
Crit., p. 36; Composition, p. 289.
- WARREN SAVINGS BANK *v.* PALMER.....10-239  
Amendment, p. 202; Bankrupt, p. 265; Denial of Bankruptcy, p. 346; Jury Trial, p. 474.
- WARREN *v.* TENTH NATIONAL BANK *et al.*.....7-481
- WARSHING, I. & S... ..5-350  
Attorney and Counsel, p. 263.
- WASHINGTON MARINE INS. Co.....2-648  
Corporation, p. 310.
- WATERS *et al.*, COOK *v.*.....9-155  
Action, p. 182; Appropriation of Payments, p. 213; Assignee, p. 230; *Idem*, p. 235; *Idem*, p. 238; Confession of Judgment, p. 293; Courts, p. 328; *Idem*, p. 329; Discretion, p. 370; Jurisdiction, p. 469; Remedy, p. 604.
- WATSON.....2-570  
Homestead, p. 426; Practice, p. 549.
- WATSON.....4-613  
Construction, p. 298; Residence, p. 609.
- WATSON *v.* CITIZENS' SAVINGS BANK.....9-458  
Attorney and Counsel, p. 261; Contempt, p. 302.
- WATTS.....2-447  
Amendment, p. 206; Certifying Questions, p. 276; Schedules, p. 618.
- WAY *v.* HOWE.....4-677  
Impeaching Discharge, p. 439.
- WEAMER.....8-527  
Assignee, p. 230; Execution, p. 397; Injunction, p. 441.
- WEAVER, CHRISTOPHER.....9-133  
Acts of Bankruptcy, p. 178; Commercial Paper, p. 285; Fraud, p. 424; Partnership, p. 522; Sales, p. 616; Secured Creditor, p. 620.



- WEAVER, GODDARD v.**.....6-440  
Crit., p. 33; Adjudication, p. 192;  
Foreclosure, p. 411; Lien, p. 483.
- WEBB & Co.**.....6-302  
Rent, p. 606.
- WEBB & JOHNSON**.....2-614  
Partnership, p. 528; Priority, p. 565.
- WEBB & TAYLOR**.....3-720  
Crit., p. 36; Fifty per Cent., p. 409.
- WEEKS**.....4-364  
Execution, p. 397; Judgment, p. 457;  
Lien, p. 483; Power of Attorney, p. 546.
- WEIKERT & PARKER**.....8-27  
Acts of Bankruptcy, p. 180; Partner-  
ship, p. 521; Suspension of Payment,  
p. 653.
- WELCH**.....5-348  
Exemption, p. 402; Money, p. 498.
- WELLS, A. T. & A. L., JR.**.....3-371  
Insolvency, p. 447; Suffering Property  
to be Taken, p. 646.
- WELLS, Ex parte, CLAFLIN & Co.**....1-171  
Commercial Paper, p. 283; Suspen-  
sion of Payment, p. 653.
- WEST et al., BARTHOLOMEW v.**.....8-12  
Assignee, p. 246; Delay, p. 344;  
Homestead, p. 434.
- WESTCOTT et al.**.....7-285  
Adjudication, p. 188; Suspension of  
Payment, p. 655.
- WHATLEY, MEEKS v.**.....10-498  
Encumbered Property, p. 377; Fraud,  
p. 429; Lien, p. 480; *Idem*, p. 481;  
*Idem*, p. 486; *Idem*, p. 487; Sales, p.  
617; Taxes, p. 656.
- WHEELER, COMSTOCK v.**.....2-561  
Order, p. 515; Practice, p. 551; Vacat-  
ing Proof, p. 669.
- WHELOCK v. LEE**.....10-363  
Assignee, p. 234; Usury, p. 668.
- WHITE**.....2-590  
Crit., p. 36; Books of Account, p. 271;  
Trader, p. 661.
- WHITE**.....9-267  
Agent, p. 197.
- WHITE v. JONES**.....6-175  
Assignee, p. 231; Distribution, p. 374;  
Lien, p. 481; Pleading, p. 537.
- WHITE & MAY**.....1-218  
Advertisement, p. 195; Sales, p. 611.
- WHITEHEAD**.....2-599  
Cost and Fees, p. 318; Exemption, p.  
402; Homestead, p. 435; Mortgage, p.  
504; Priority, p. 565.
- WHITEHOUSE**.....4-63  
Arrest, p. 216.
- WHITMAN v. BUTLER**.....8-487  
Advice of Counsel, p. 195; Foreclos-  
ure, p. 412; Sales, p. 616; Stay of Pro-  
ceedings, p. 640.
- WHITTAKER**.....4-160  
Confederate Money, p. 292; Provable  
Debt, p. 581; War, p. 675.
- WHITTAKER, KARR v.**.....5-123  
Adjudication, p. 190; Injunction, p.  
444; Parties, p. 519.
- WHYTE**.....9-267  
Proof of Debt, p. 572.
- WILBUR, JEREMIAH**.....3-276  
Jurisdiction, p. 467; Lien, p. 482;  
Stay of Proceedings, p. 639.
- WILD, RECEIVER OCEAN NATIONAL BANK  
v.**.....10-568  
National Bank, p. 510; Usury, p.  
669.
- WILDER et al., COX v.**.....5-443  
Crit., p. 31; Practice, p. 551.
- WILDER et al., COX v.**.....7-241  
Crit., p. 31; Assignee, p. 229; Fraud,  
p. 439; Homestead, p. 433.
- WILDER et al., BALDWIN et al. v.**.....6-85  
Crit., p. 30; Amendment, p. 199;  
Fourteen Days, p. 415; Suspension of  
Payment, p. 654.
- WILKINSON**.....3-286  
Discharge, p. 361
- WILLIAMS, DANIEL**.....2-83  
Attorney and Counsel, p. 263; Contri-  
bution, p. 304; Cost and Fees, p. 314;  
*Idem*, p. 315; Discretion, p. 370.
- WILLIAMS, DAVID B.**.....2-229  
Crit., p. 36; Judgment, p. 460; Prova-  
ble Debt, p. 583.
- WILLIAMS, G. & A.**.....3-286  
Acts of Bankruptcy, p. 176; Delay, p.  
344; Partnership, p. 522; Payment, p.  
530; Proceedings in Bankruptcy, p.  
568.
- WILLIAMS, BINGHAM v.**.....6-130  
Conveyance, p. 304; Mortgage, p.  
501.
- WILLIAMS, CREDITORS v.**.....4-579  
Commencement of Proceedings, p. 282;  
Opposing Discharge, p. 514; Power of  
Attorney, p. 546.
- WILLIAMS v. MERRITT**.....4-706  
Adjudication, p. 191; Attachment, p.  
257.

- WILLIAMS, THORNHILL *et al.* AND, *v.*  
BANK OF LOUISIANA.....3-435  
Crit., p. 36; Corporation, p. 306; *Idem*,  
p. 309; Courts, p. 330; Jurisdiction, p.  
464.
- WILLIAMS, THORNHILL *et al.* AND, *v.*  
BANK OF LOUISIANA.....5-367  
Crit., p. 36; Bankrupt Act, p. 268;  
Parties, p. 519; Review, p. 610.
- WILLIAMS, THORNHILL *et al.* AND, *v.*  
BANK OF LOUISIANA.....5-377  
Appeal, p. 212; Stay of Proceedings,  
p. 637.
- WILLIS, SIGSBY *v.*.....3-207  
Partnership, p. 525; Provable Debt,  
p. 584.
- WILLMOTT.....2-214  
Application for Discharge, p. 213;  
Discharge, p. 350.
- WILSON.....7-505  
Adjudication, p. 191.
- WILSON.....8-396  
Acts of Bankruptcy, p. 176; *Idem*, p.  
180; Adjudication, p. 189; Bankrupt,  
p. 266; Suspension of Payment, p. 655.
- WILSON, ASSIGNEE, *v.* BRINKMAN *et*  
*al.*.....2-468  
Execution, p. 398; Insolvency, p. 466;  
Ordinary Course of Business, p. 517;  
Preferences, p. 561.
- WILSON *v.* CAPURO & CAPURO.....4-714  
Assets, p. 220; Stay of Proceedings,  
p. 641; Waiver, p. 674.
- WILSON *v.* CHILDS.....8-527  
Assignee, p. 230; Execution, p. 397;  
Injunction, p. 441; Priority, p. 566.
- WILSON *v.* CITY BANK OF ST. PAUL..5-270  
Crit., p. 36; Insolvency, p. 448.
- WILSON *v.* CITY BANK OF ST. PAUL..9-97  
Crit., p. 36; Acts of Bankruptcy, p.  
179; Judgment, p. 461; Lien, p. 479;  
Procuring and Suffering to be Taken;  
p. 571; Suffering Property to be Taken,  
p. 646.
- WILSON & SHOBER, BANK OF NORTH  
CAROLINA.....10-289  
Creditors, p. 334.
- WILSON *v.* STODDARD.....4-254  
Practice, p. 551.
- WINKENS.....2-349  
Discharge, p. 362; Partnership, p. 521.
- WINN... ..1-499  
Lien, p. 486; Priority, p. 565.
- WINSOR, ROGERS *v.*.....6-246  
Assignee, p. 230; *Idem*, p. 231; Bill in  
Equity, p. 269; Books of Account, p.  
272; Practice, p. 547.
- WINSTON, KINZIE *v.*.....4-84  
Accretion, p. 173
- WINTER.....1-481  
Courts, p. 326; Encumbered Property,  
p. 377; Jurisdiction, p. 467.
- WINTER *et al.*, GRAVES *et al.* *v.*.....9-357  
Bankrupt Act, p. 267; Executors, p. 399
- WINTER *v.* IOWA, MINNETONA & NORTH  
PACIFIC RAILWAY COMPANY..7-289  
Acts of Bankruptcy, p. 175; *Idem*, p.  
181; Corporation, p. 306; Stock, p. 642;  
Suspension of Payment, p. 655.
- WITHROW *v.* FOWLER.....7-339  
Transfer, p. 662.
- WITKOWSKI, *In re*.....10-209  
Assignee, p. 241; Discharge, p. 355;  
Examination, p. 395.
- WOOD.....5-421  
Transfer, p. 662.
- WOOD MOWING AND REAPING MACHINE  
CO. *v.* BROOKE, ASSIGNEE.....9-395  
Agreement, p. 197; Assets, p. 219;  
Title, p. 660.
- WOODDAIL, NANCY, *v.* AUSTIN & HOLLI-  
DAY.....10-545  
Bankruptcy of Plaintiff, p. 269; Non-  
suit, p. 511.
- WOODS.....7-126  
Acts of Bankruptcy, p. 175; *Idem*, p.  
179; Insolvency, p. 448; Procuring and  
Suffering to be Taken, p. 571; Trader,  
p. 661.
- WOODS.....7-126  
Assets, p. 220.
- WOODS *et al.* *v.* BUCKEWELL.....7-405  
Assignee, p. 224; Courts, p. 323; *Idem*,  
p. 326; Equity, p. 381.
- WOODS, FORSYTH *v.*.....5-78  
Debt, p. 341; Joint Liability, p. 455;  
Partnership, p. 528.
- WOODS, HYDE *v.*.....10-54  
Priority, p. 567; Stock Board, p. 642;  
Surplus, p. 650.
- WOODWARD & WOODWARD.....3-719  
Privilege of Counsel, p. 567; Witness,  
p. 681.
- WOOLFOLK *v.* GUNN.....10-526  
Courts, p. 332; Practice, p. 550.
- WOOLFOLK *v.* MURRAY.....10-540  
Courts, p. 331; Homestead, p. 433;  
Jurisdiction, p. 472.

WOOLFORD.....3-444	Assignee, p. 233 ; Assignment, p. 253 ;
Examination, p. 388 ; Wife of Bankrupt, p. 677.	Conveyance, p. 304 ; Encumbered Property, p. 377 ; Lien, p. 484 ; Mortgage, p. 506 ; Proof of Debt, p. 579 ; Rent, p. 605 ; Secured Creditor, p. 620.
WOOLUMS.....1-496	
Assets, p. 220 ; Discharge, p. 351.	
WOOTEN, O'DELL <i>v.</i> .....4-183	
Discharge, p. 366 ; Surety, p. 649.	
"WORLD COMPANY" <i>v.</i> BROOKS.....3-588	YORK & HOOVER.....3-661
Stay of Proceedings, p. 641.	Mortgage, p. 502 ; <i>Idem</i> , p. 508.
WORMSER, SEDGWICK <i>v.</i> .....7-186	YORK & HOOVER.....4-479
Fraud, p. 425 ; Sales, p. 615.	Appeal, p. 209 ; Courts, p. 324 ; Jurisdiction, p. 464 ; Proceedings in Bankruptcy, p. 568 ; <i>Idem</i> , p. 569 ; Time, p. 657.
WRIGHT.....2-142	YOUNG.....2-665
Discharge, p. 363 ; Examination, p. 394 ; Liability, p. 477 ; Suits, p. 646.	Lien, p. 484.
WRIGHT, G. C.....8-430	YOUNG, B. F. & J. M.....3-440
Homestead, p. 435.	Exemption, p. 403.
WRIGHT, J. B.....2-490	YOUNG, COMSTOCK &.....5-191
Crit., p. 36 ; Attorney and Counsel, p. 261 ; Confession of Judgment, p. 293 ; Insolvency, p. 448 ; Judgment, p. 457 ; Knowledge of Insolvency, p. 475.	Attorney and Counsel, p. 264 ; Cost and Fees, p. 314 ; <i>Idem</i> , p. 315.
WRIGHT & PECKHAM.....2-41	
Discharge, p. 358.	ZAHM <i>v.</i> FRY <i>et al.</i> .....9-546
WRIGHT <i>v.</i> FILLEY.....4-611	Judgment, p. 462 ; Purchaser, p. 548 ; Title, p. 660.
Procuring and Suffering to be Taken, p. 570.	ZANTZINGER <i>v.</i> RIBBLE.....4-724
WRIGHT <i>v.</i> JOHNSON.....4-626	Assignee, p. 239 ; Title, p. 658.
Pleading, p. 544.	ZEIBER <i>v.</i> HILL.....8-239
WYATT.....2-288	Cost and Fees, p. 319 ; Sheriff, p. 632.
Concealment, p. 291 ; Discharge, p. 355 ; <i>Idem</i> , p. 362.	ZINN <i>et al.</i> .....4-436
WYLIE.....2-137	Relative of Bankrupt, p. 603 ; Trustee, p. 665.
Assignment, p. 251.	ZINN, ALDRICH & Co.....4-370
WYNNE.....4-23	Assignee, p. 223.

# GENERAL INDEX.

---

	PAGE		PAGE
ABSENCE.....	172	ADJUDICATION.— <i>Continued.</i>	
ACCOMMODATION-NOTE.....	172	Legal Status.....	185
ACCOUNT.....	172	Opposing.....	190
ACCRETION.....	172	Petitioning Creditor.....	190
ACKNOWLEDGMENT.....	173	Practice.....	190
ACTS OF BANKRUPTCY.....	173	Register may Make.....	190
TIME WHEN COMMITTED .....	181	Relation, Back of.....	193
WHAT CONSTITUTES ACTS OF BANK-		Review.....	189
RUPTCY.....	174	Setting Aside.....	190
Arrest.....	174	Who may be Adjudicated.....	189
Assignment.....	174	ADMINISTRATION OF BANK-	
Commercial Paper.....	175	RUPT'S ESTATE.....	193
Concealment.....	175	ADMINISTRATOR.....	192
Confession of Judgment.....	175	ADMISSION.....	192
Delaying Creditors.....	176	ADVANCE BILL.....	193
Insolvency.....	176	ADVANCES.....	193
Legal Process.....	176	Generally.....	193
Mortgage. ....	176	Accommodation-Note.....	193
Payment.....	177	Before and After Petition Filed..	194
Preference.....	177	Composition Deed.....	193
Sales.....	178	Contract of Sale.....	193
Suffering Property to be Taken...	179	Fees of Court.....	193
Suspension.....	179	Rent.....	194
Transfers.....	181	Security.....	194
Unstamped Note.....	181	Wages.....	194
Wages.....	181	ADVERSE CLAIMANT.....	194
WHO MAY COMMIT .....	173	ADVERTISEMENT.....	194
Infants.....	173	ADVICE OF COUNSEL.....	195
Insane Persons.....	173	AFFIDAVIT.....	195
Married Persons.....	173	AFTER-ACQUIRED PROPERTY...	195
Railways.....	174	AGENT.....	196
ACTION.....	181	AGREED CASES.....	197
ADJOURNMENT.....	182	AGREEMENT.....	197
Of First Meeting.....	183	ALIAS EXECUTION.....	198
Of Order to Show Cause.....	183	ALIENS.....	198
Order to Show Cause against Dis-		ALLEGATION.....	198
charge.....	184	AMENDMENT.....	198
Practice.....	184	GENERALLY.....	199
ADJUDICATION.....	185	To Act .....	199
Effect of, Generally.....	191	Of 1870.....	199
Effect of, on Remedies.....	192	Of 1873.....	200
For what Granted.....	187	Of 1874.....	200

AMENDMENT.—*Continued.*

	PAGE
OF PLEADINGS.....	203
Application for Discharge.....	203
Deposition to Act of Bankruptcy.	203
Petition.....	204
Petition for Review.....	205
Proof of Debt.....	205
Record .....	206
Return of Assignee.....	206
Schedules .....	206
Specification.....	207
AMOUNT DUE.....	207
AMOUNT OF INDEBTEDNESS....	207
ANSWER.....	207
APPEAL.....	208
Bond.....	208
Circuit Court.....	209
Cost.....	208
Generally.....	208
Supreme Court.....	211
APPEARANCE.....	212
APPLICATION FOR DISCHARGE..	213
APPORTIONMENT.....	213
APPROPRIATION OF PAYMENT..	213
ARRANGEMENT.....	213
ARREST.....	214
As an Act of Bankruptcy.....	217
Cannot be Arrested.....	214
May be Arrested.....	215
Prior to Adjudication.....	216
Probable Cause.....	217
Miscellaneous.....	217
ASSENT TO DISCHARGE....	217
ASSESSMENT OF STOCK.....	218
ASSETS.....	218
Custody of.....	220
Equitable.....	221
Fifty per Cent.....	220
Following.....	221
Incumbered Property.....	220
Information Regarding.....	221
Insolvency.....	220
" No Assets ".....	219
Partnership Assets.....	222
Vesting in Assignee.....	220
What is Included.....	218
What is not Included.....	219
ASSIGNEE.....	222
Application for an.....	223
Appointment of.....	223
Approval of.....	227
Bond.....	228

ASSIGNEE.—*Continued.*

	PAGE
Compensation.....	249
Counsel.....	228
Duties of.....	241
Election of.....	224
Estate, Vesting of, in.....	229
Foreign.....	227
Liability of.....	247
Recovery by.....	233
Removal of.....	249
Rights of.....	248
Suits by and against.....	236
Title of.....	230
Under State Law.....	228
Voluntary.....	228
Who Eligible as.....	222
ASSIGNMENT .....	251
BY BANKRUPT.....	251
As an Act of Bankruptcy.....	253
Effect of.....	262
Equitable.....	251
Relation back of.....	252
Setting Aside.....	255
Validity of.....	251
BY CREDITOR.....	251
BY REGISTER.....	251
ASSUMPSIT.....	256
ATTACHMENT.....	256
For Contempt.....	256
Of Property.....	257
ATTORNEY AND COUNSEL.....	259
Advice of.. ..	261
Appearance.....	260
Contempt.....	261
Election as Assignee... ..	262
Fees of.....	263
Knowledge of.....	261
Verification of Pleadings.....	260
Voting.....	261
Witness for, and as.....	262
BAIL.....	264
BANK.....	264
BANKRUPT.....	264
BANKRUPT ACT.....	266
BANKRUPT COURT.....	268
BANKRUPT LAW *.....	58
ABSENCE OF DEBTOR, PROCEED-	
INGS UPON, SEC. 5031.....	85
Attorney.....	85
ACTS OF BANKRUPTCY, SEC. 5021...	76

\* The headings in Roman lower case under title " Bankrupt Law " refer to headings under which the cases construing the Sections are separated.

<b>BANKRUPT LAW.*—Continued.</b>	<b>PAGE</b>	<b>BANKRUPT LAW.*—Continued.</b>	<b>PAGE</b>
Acts of Bankruptcy.....	79	Anticipating Questions.....	71
Actions.....	77	To SUPREME COURT, SEC. 4989..	66
Arrest of Debtor.....	77	Supreme Court.....	66
Assignment for Benefit of Creditors	77	APPLICATION FOR DISCHARGE, SEC.	
Bank.....	78	5108.....	116
Burden of Proof.....	81	Application for Discharge.....	116
Commercial Paper.....	78	ARBITRATION, SEC. 5061.....	95
Concealment.....	76	Compromise.....	95
Confession of Judgment.....	78	ARREST, EXEMPTION FROM, SEC.	
Congress....	81	5107. ....	116
Construction.....	76	Arrest of Debtor Pending Pro-	
Fraudulent Conveyances.....	77	ceedings.....	116
Fraudulent Suspension.....	78	ASSETS MUST EQUAL THIRTY PER	
Imprisonment.....	77	CENT., SEC. 5112.....	120
Insolvency.....	77	Fifty per Cent.....	121
Intent to Defeat Operation of the		Since Amendment of June, 1874..	121
Bankrupt Act.....	78	ASSIGNEE, ACCOUNT OF SETTLE-	
Intent to Prefer.....	78	MENT OF, SEC. 5096.....	109
Involuntary Bankruptcy.....	79	Auditing Assignee's Account ....	110
Knowledge of Insolvency.....	80	BOND OF, SEC. 5036.....	88
Legal Process.....	77	Bond Required.....	88
Limitation.....	79	CHOICE OF, SEC. 5034.....	87
Manufacturers.....	78	Appointment of Assignee.....	88
National Banks.....	81	Approved by the Judge.....	88
Petitioner's Claim.....	76, 81	Choice of Assignee.....	87
Petitioning Creditor.....	81	COMMISSIONS OF, SEC. 5100.....	110
Practice.....	79, 81	Commissions..	110
Preferences, What are Void.....	80	COMPENSATION OF, SEC. 5099.....	110
Railways.....	81	What Allowed.....	110
Stoppage of Payment.....	78	LIABILITY FOR CONTEMPT, SEC. 5037	88
Voluntary Appearance.....	81	List of Creditors.....	88
ALLOWANCE AND LIST OF DEBTS,		DEATH OR REMOVAL OF, DOES NOT	
SEC. 5085.....	106	ABATE SUIT, SEC. 5048.....	93
Power to Revise List.....	106	TO DEMAND AND RECEIVE ALL AS-	
APPEALS TO CIRCUIT COURT, SEC.		SIGNED ESTATE, SEC. 5055.....	94
4980.....	64	Property Received by Mistake....	94
Appeal.....	64	DISQUALIFICATIONS FOR POSITION	
Construction.....	64	OF, SEC. 5035.....	88
Rejected Claim.....	64	Who Ineligible.....	88
Writ of Error.....	64	DUTIES OF, UPON RESIGNATION OR	
How ENTERED, SEC. 4982.....	64	REMOVAL, SEC. 5040.....	89
Compliance in Point of Time,		FILLING VACANCIES IN OFFICE OF,	
essential.....	64	SEC. 5041.....	89
How TAKEN, SEC. 4981.....	64	Power not Exercisable before	
Time.....	64	First Election.....	89
Writ of Error.....	64	POWER TO EXECUTE INSTRU-	
WAIVER OF, SEC. 4983.....	65	MENTS, SEC. 5043.....	89
Waiver.....	65	TO KEEP A REGISTER OF CREDI-	
FROM DECISION REJECTING		TORS PROVING CLAIMS, SEC.	
CLAIM, SEC. 4984.....	65	5080.....	105
Pleading.....	65	TO KEEP MONEY AND GOODS SEPA-	
FROM DECISION UPON QUESTIONS		RATE FROM OTHER PROPERTY	
SUBMITTED, SEC. 5011.....	71	IN HIS POSSESSION, SEC. 5059..	95

\* The headings in Roman lower case under title "Bankrupt Law" refer to headings under which the cases construing the Sections are separated.



<b>BANKRUPT LAW.*—Continued.</b>	<b>PAGE</b>	<b>BANKRUPT LAW.*—Continued.</b>	<b>PAGE</b>
Duties of Assignee.....	95	This Section merely Precautionary.....	94
NOTICE OF APPOINTMENT OF, SEC. 5054.....	94	CIRCUIT COURT, POWER OF GENERAL SUPERINTENDENCE, SEC. 4986.....	65
Notice of Appointment.....	94	Construction.....	65
NOTICE PRIOR TO SUIT AGAINST, SEC. 5056.....	94	Proceedings for Review.....	65
REMOVAL OF, SEC. 5039.....	89	CIRCUIT JUDGE, POWER OF, DURING ABSENCE, ILLNESS OR DISABILITY OF DISTRICT JUDGE, SEC. 4976.....	62
Removal of Assignee.....	89	CLAIMS OUTSTANDING, SALE OF, SEC. 5064.....	98
RESIGNATION OF, SEC. 5038.....	89	COMMENCEMENT OF PROCEEDINGS, WHAT CONSTITUTES, SEC. 4991.....	67
RIGHT OF ACTION OF, SEC. 5047....	92	Commencement of Proceedings..	67
Pending Suits.....	98	Filing Petition.....	67
State Courts.....	98	COMPOSITION, SEC. 5103 (a).....	113
Suits by Assignee.....	92	CONTEMPT BEFORE REGISTER, SEC. 5006.....	70
TO SELL PROPERTY, SEC. 5062.....	96	Examination.....	70
Sales by Assignee.....	96	Examination on Commission.....	70
VESTING OF ESTATE IN REMAINING, SEC. 5042.....	89	CONTINGENT DEBTS, SEC. 5068.....	100
WHAT PROPERTY VESTS IN, SEC. 5046.....	92	Contingent Liabilities.....	100
Fraudulent Conveyances.....	92	CONTINUANCE OF BANKRUPT'S BUSINESS, SEC. 5062 (a).....	96
ASSIGNMENT, SEC. 5044.....	89	Expenditures on Property.....	96
Assignment.....	89	CORPORATIONS, SEC. 5122.....	125
Dissolution of Attachments.....	90	What Corporations included.....	125
Property Vested in Assignee.....	90	CONTROL OF STATE COURTS OVER PROCEEDINGS AGAINST, SEC. 5123.....	126
COPY OF, CONCLUSIVE EVIDENCE OF TITLE, SEC. 5049.....	98	Proceedings in State Courts.....	126
Evidence.....	98	COSTS AND FEES.....	126
RECORDING, SEC. 5054.....	94	COSTS ON APPEAL TO CIRCUIT COURT, SEC. 4985.....	65
Recording Assignment.....	94	CREDITORS MAY ACT BY ATTORNEY, SEC. 5095.....	109
ATTORNEY, CREDITOR'S MAY ACT BY, SEC. 5095.....	109	Power of Attorney.....	109
Power of Attorney.....	109	DEATH OF DEBTOR DOES NOT ABATE PROCEEDINGS, SEC. 5090	108
AUTHORITY OF DISTRICT COURT AND JUDGES, SEC. 4973.....	62	Otherwise if Before Adjudication..	108
Contempt.....	62	DEBTS FALLING DUE AT STATED PERIODS, SEC. 5071.....	101
District Court.....	62	Proof of Rent.....	101
BANKRUPTCY.....	59	NOT PROVABLE UNLESS SPECIFIED IN THE ACT, SEC. 5072.....	101
BANKRUPT SUBJECT TO ORDERS OF COURT, SEC. 5104.....	115	Discharge Affects only Debts Provable.....	101
Control of Court over Bankrupt..	115	NOT RELEASED BY DISCHARGE, SEC. 5117.....	122
BOOKS OF ACCOUNT, SEC. 5050. ...	98	Fiduciary Debts.....	122
When Claimed by Purchaser in Good Faith.....	98	Fraudulent Debts.....	122
BUSINESS OF BANKRUPT, CONTINUANCE OF, SEC. 5062 (a).....	96		
Expenditures upon Property.....	96		
CERTIFICATE OF DISCHARGE, FORM OF, SEC. 5115.....	121		
Certificate of Discharge.....	121		
OF MATTER TO BE DECIDED BY JUDGE, SEC. 5010.....	71		
Who may Take Opinion.....	71		
CHATTEL MORTGAGES, SEC. 5052... ..	98		

\* The headings in Roman lower case under title "Bankrupt Law" refer to headings under which the cases construing the Sections are separated.

<b>BANKRUPT LAW.*—Continued.</b>	<b>PAGE</b>	<b>BANKRUPT LAW.*—Continued.</b>	<b>PAGE</b>
DEBTOR MUST EXECUTE INSTRUMENTS, SEC. 5051.....	93	Suffering Property to be Taken... 118	
Substitution in Pending Suits....	93	Transfers in Contemplation of Bankruptcy.....	119
DEFINITIONS, SEC. 5018.....	71	NOTICE OF APPLICATION FOR, SEC. 5109.....	117
Commercial Paper.....	72	Notice of Application.....	117
Commission Merchant.....	72	SPECIFICATIONS IN OPPOSITION TO, SEC. 5111.....	120
Contemplation of Bankruptcy....	72	Averments they must Contain....	120
Contemplation of Insolvency.....	72	Filing.....	120
Definitions.....	71	Trial of.....	120
Fiduciary Debt.....	72	UPON SECOND BANKRUPTCY, SEC. 5116.....	121
Insolvency.....	72	WHAT DEBTS NOT RELEASED BY, SEC. 5117.....	122
Intent.....	72	Fiduciary Debts.....	122
Marshal.....	71	Fraudulent Debts.....	122
Messenger.. ..	71	DISTINCT LIABILITIES, SEC. 5074....	101
Mutual Debts.....	72	Sole Trader.....	102
Ordinary Course of Business....	73	DISTRIBUTION OF DEBTOR'S PROPERTY, SECS. 5029, 5091.....	85, 108
Persons.....	72	State Laws.. ..	108
Reasonable Cause.....	73	Surrender to Register not Permitted	85
Struggling to Keep Up.....	73	DISTRICT OF COLUMBIA, POWERS OF THE SUPREME COURT OF, SEC. 4977.....	63
Traders.....	73	DISTRICT COURT, POWER OF, TO COMPEL OBEDIENCE, SEC. 4975	62
DEPOSITIONS AND ACTS TO BE REDUCED TO WRITING, SEC. 5004.	69	Manner of Proceeding.....	62
DISCHARGE.	115	DISTRICT JUDGE, POWER OF, IN A DISTRICT NOT WITHIN AN ORGANIZED CIRCUIT, SEC. 4988 ...	66
DISCHARGE, AGREEMENTS FOR ASSENT TO, SEC. 5131.....	133	DIVIDEND, NOTICE OF, SEC. 5102... 111	
Void Agreement.....	134	Dividend Warrant.....	111
APPLICATION TO ANNUL, SEC. 5120.	123	NOT TO BE DISTURBED, SEC. 5097.. 110	
In what Courts and how Attacked	123	Rights of Creditors who have not Proved.....	110
COURT TO GRANT, SEC. 5114.....	121	EVIDENCE OF FRAUD, SEC. 5130... 133	
Grounds for Withholding Discharge.....	121	Ordinary Course of Business....	133
DOES NOT AFFECT LIABILITY OF OTHER PERSONS, SEC. 5118....	122	MODE OF TAKING, SEC. 5003.....	69
Joint Liability.....	122	Affidavit .....	69
EFFECT OF, SEC. 5119.....	122	This Provision Exclusive.....	69
How to Plead and Effect of.....	123	EXAMINATION OF BANKRUPT, SEC. 5086.....	106
GROUND FOR REFUSING, SEC. 5110.	117	Bankrupt's Examination.....	106
Assent to Discharge.....	119	Practice.....	107
Books of Account.....	119	Subject Matter of.....	107
Concealment of Property .....	118	OF IMPRISONED OR DISABLED BANKRUPT, SEC. 5089.....	108
Discharge, when not Granted....	117	OF BANKRUPT'S WIFE, SEC. 5088.. 107	
Failure to Preserve Property pending Election of Assignee.....	118	Wife of Bankrupt.....	108
False Entries.....	118	EXEMPTIONS, SEC. 5045.....	90
False Swearing.....	118	Assignee's Duty.....	92
Fictitious Debts.....	119		
Fraud.....	119		
Fraudulent Preferences.....	119		
Fraudulent Transfers.....	119		
Gaming.....	119		
Limitation.....	120		
Misdemeanors .....	120		
Removal from District.....	120		

\* The headings in Roman lower case under title "Bankrupt Law" refer to headings under which the cases construing the Sections are separated.

<b>BANKRUPT LAW.*—Continued.</b>	<b>PAGE</b>	<b>BANKRUPT LAW.*—Continued.</b>	<b>PAGE</b>
Exemptions .....	91	Proceedings in District Court....	62
Exemptions by Bankrupt Act....	91	Suits by Assignee in State Courts.	62
Exemptions under State Law....	91	OF ACTIONS BETWEEN ASSIGNEES	
EXPENSES OF REGISTER, SEC. 5125.	127	AND PERSONS CLAIMING AD-	
Expenses of Register.....	127	VERSE INTERESTS, SEC. 4979...	63
FEEES AND COSTS.....	126	Actions at Law and in Equity....	63
FEES OF MARSHAL, SEC. 5126.....	127	Adverse Interests.....	63
Messenger and Marshal's Fees...	128	Debts.....	63
OF REGISTER, SEC. 5124.....	126	Recovery of Property Fraudulent-	
Fees of Register.....	127	ly Transferred.....	63
OF REGISTERS, PAYMENT OF, SEC.		LIENS, DISCHARGE OF, SEC. 5066...	98
5008.....	70	Prior to Maturity of Debt.....	98
Parties for whom Services Render-		LIST OF DEBTS, SEC. 5085.....	106
ed.....	70	Power to Revise List.....	106
REDUCTION OF, SEC. 5127 (a).....	128	MARSHAL TO MAKE RETURNS, SEC.	
Assignee's Fees.....	128	5127(b).....	128
Bankrupt's Allowances.....	128	RETURN OF, SEC. 5033.....	87
Petitioning Creditor—Cost.....	128	Return of Warrant.....	87
TARIFF OF, JUSTICES OF SUPREME		MEETING, OMISSION OF ASSIGNEE	
COURT MAY PRESCRIBE, SEC. 5127	128	TO CALL, SEC. 5098.....	110
Where Two or More Orders Served		Practice.....	110
at same Time.....	128	MONEY, TEMPORARY INVESTMENT	
FOUR MONTHS, PERIOD OF, CHANGED		OF, SEC. 5060.....	95
TO TWO MONTHS, SEC. 5130 (a).	133	Distribution.....	95
Fraudulent Transfers.....	130	Dividends.....	95
ISSUES, CONTESTED, TO BE TRIED BY		Securities.....	95
JUDGE, SEC. 5009.....	70	Surplus Funds.....	95
Certifying Questions.....	70	NOTARIES PUBLIC AUTHORIZED TO	
Issues of Fact and Law.....	70	TAKE PROOF OF DEBT, SEC.	
INVENTORY IN VOLUNTARY PRO-		5076 (a).....	103
CEEDINGS, SEC. 5016.....	74	NOTICE TO CREDITORS, CONTENTS	
Preparation of Inventory.....	75	OF, 5032.....	87
IN INVOLUNTARY PROCEEDINGS,		Notice of First Meeting.....	87
SEC. 5030.....	85	OF MEETINGS, SEC. 5094.....	199
JOINT STOCK COMPANIES, SEC. 5122	125	Notice to Creditors.....	109
JUDICIARY, THE.....	58	OATH OF ALLEGIANCE, SEC. 5018...	75
JURISDICTION, EXCLUSIVE, SEC. 711	59	Oath of Allegiance.....	75
Exclusive Jurisdiction.....	59	OF CREDITOR, SEC. 5077.....	104
Proceedings in Bankruptcy.....	59	TO PETITION AND SCHEDULES, SEC.	
ORIGINAL, SEC. 563.....	58	5017.....	75
Constitutionality of Act.....	58	Verification and Petition.....	75
Different Districts.....	58	TO PROOF OF DEBT, WHERE	
Jurisdiction.....	58	TAKEN, SEC. 5079.....	105
Proceedings in Bankruptcy.....	59	TO PROOF OF DEBT, BY WHOM	
State Insolvent Laws.....	59	MADE, SEC. 5079.....	105
SCOPE OF, SEC. 4972.....	59	When Purchaser or Agent may	
Claim.....	61	Prove.....	105
Collection of Debts.....	61	FINAL, OF BANKRUPT, SEC. 5113...	121
Construction.....	60	Final Oath.....	121
Control over Proceedings in State		ORDER TO SHOW CAUSE, SERVICE	
Courts.....	61	OF, SEC. 5025.....	82
Liens.....	61	Adjournment.....	83
Priority.....	61	Appearance.....	83

\* The headings in Roman lower case under title "Bankrupt Law" refer to headings under which the cases construing the Sections are separated.

<b>BANKRUPT LAW.*—Continued.</b>	<b>PAGE</b>	<b>BANKRUPT LAW.*—Continued.</b>	<b>PAGE</b>
Requisite Number.....	83	PRIOR ACTS OF BANKRUPTCY, SEC.	
Service upon Debtor.....	82	5022 .....	81
Serving Subpoena.....	83	PRIORITY, DEBTS ENTITLED TO, SEC.	
OUTSTANDING CLAIMS, SALE OF,		5101 .....	111
SEC. 5064.....	98	Costs and Expenses in Voluntary	
PARTNERSHIP, BANKRUPTCY OF.		Bankruptcy.....	111
SEC. 5121.....	124	In Voluntary Bankruptcy.....	111
Distribution of Assets.....	124	Order of Distribution.....	111
Election of Assignee.....	124	PROCEEDINGS IN CASES OF	
Petition Against.....	124	PARTNERSHIPS AND COR-	
When Liable to be Adjudged		PORATIONS.....	124
Bankrupt.....	124	PROCEEDING TO REALIZE THE	
Where Partners Reside in Differ-		ESTATE FOR CREDITORS..	85
ent Districts.....	125	PROCEEDINGS ON RETURN DAY, SEC.	
PENALTIES AGAINST FRAUDULENT		5026 .....	83
BANKRUPT, SEC. 5132.....	134	Appearance and Pleading.....	83
Misdemeanors.....	134	Discontinuance of Proceedings...	84
AGAINST OFFICERS, SEC. 5012.....	71	Dismissal of Proceedings.....	84
PERISHABLE PROPERTY, SALE OF,		Proceedings by other Creditors...	84
SEC. 5065.....	98	Interpretation.....	84
Perishable Property.....	98	Intervenor.....	84
PETITION, SEC. 5014.....	73	Intervention .....	84
Aliens.....	73	PROOF OF DEBT, WHAT IT MUST	
Carrying on Business.....	74	CONTAIN, SEC. 5077.....	104
Debts.....	73	Amendment.....	104
District, In what.....	74	Proving Claim.....	104
Married Woman.....	74	Proving Secured Claims as Unse-	
Minor.....	74	cured .....	104
Petition.....	74	Secured Debt.....	104
Residence.....	78	BEFORE WHOM MADE, SECS. 5076,	
Surrender of Bankrupt.....	74	5076 (a) .....	103
Who may Apply.....	73	Before whom Taken, and Effect of	
WHO MAY FILE, SEC. 5023.....	82	Proof .....	103
Injunction.....	82	TO BE SENT TO REGISTER, SEC. 5079	105
Order to Show Cause.....	82	TO BE SENT BY REGISTER TO AS-	
Provisional Warrant.....	82	SIGNEE, SEC. 5080.....	105
Restraining Suit.....	82	Duties of Register and Assignee..	105
Restraining Suit in State Court...	82	EXAMINATION BY THE COURT INTO,	
Sufficient Grounds.....	82	SECS. 5080, 5081 .....	105
POSTPONEMENT OF PROOF, SEC. 5083		Power of Court over Creditor	
Postponing Proofs.....	106	Proving Claim.....	105
PREFERENCES BY INSOLVENT, SEC.		PROTECTION AND DISCHARGE	
5128 .....	130	OF BANKRUPTS.....	115
Construction.....	130	PROVABLE DEBTS, SEC. 5067.....	98
Fraud upon the Act.....	132	Amount that may be Proved.....	99
Fraudulent Preferences.....	131	Claims by Bankrupt's Wife.....	99
Insolvency.....	130	Defences.....	100
Intent to Prefer.....	131	Effects of Acts done after Bank-	
Limitation as to Time.....	130	ruptcy .....	100
Reasonable Cause.....	131	Equitable Debts.....	99
Surety, where there is a.....	132	Partnership .....	99
Voidable Transfers.....	132	Proof of Debts.....	98
What may be Recovered.....	132	Torts and Damages.....	99

\* The headings in Roman lower case under title "Bankrupt Law" refer to headings under which the cases construing the Sections are separated

<b>BANKRUPT LAW.*—Continued.</b>	<b>PAGE</b>	<b>BANKRUPT LAW.*—Continued.</b>	<b>PAGE</b>
Usury.....	100	SECOND MEETING OF CREDITORS,	
RECORDS, SEC. 4992.....	67	SEC. 5092.....	108
Recording.....	67	Second and Third Meetings.....	109
REGISTERS IN BANKRUPTCY, SEC.		SECURED DEBTS, SEC. 5075.....	102
4993.....	67	Judgments.....	102
WHO IS ELIGIBLE, SEC. 4994.....	67	Liens Preserved.....	102
QUALIFICATION, SEC. 4995.....	67	Mechanic's Liens.....	102
TO ATTEND AT PLACE DIRECTED BY		Mortgages.....	102
JUDGE, SEC. 5001.....	69	Proceedings in State Court.....	103
Transfers to Different Places.....	69	Sale Free from Encumbrances... 103	
TO KEEP MEMORANDUM OF PRO-		Sale Subject to Encumbrances... 103	
CEEDINGS, SEC. 5000.....	69	Sale on Application of Secured	
Duties of Registers.....	69	Creditor.....	103
MAY ACT FOR EACH OTHER, SEC.		Secured Creditor.....	102
5007.....	70	Stay of Proceedings.....	103
POWERS OF, SEC. 4998.....	68	SESSIONS OF DISTRICT COURTS, SEC.	
Adjudication of Bankruptcy.....	68	4974....	62
Power of Examination.....	68	SET-OFF, SEC. 5078.....	101
Surrender.....	68	Mutual Debts.....	101
POWER TO SUMMON WITNESSES,		STAY OF SUITS, SEC. 5106.....	116
SEC. 5002.....	69	Staying Suits Pending Proceedings	116
Witnesses.....	69	SUPREME COURTS OF TERRITORIES,	
LIMITATION UPON POWER OF, SEC.		POWER OF GENERAL SUPERIN-	
4999.....	68	TENDENCE, SEC. 4987.....	66
RESTRICTION UPON, SEC. 4996.....	67	SURETY FOR BANKRUPT, SEC. 5070.	100
REMOVAL OF, SEC. 4997.....	68	Practice.....	101
RETURN DAY, PROCEEDINGS UPON,		LIABILITY OF BANKRUPT AS, SEC.	
SEC. 5026. See PROCEEDINGS		5069.....	100
UPON RETURN DAY.		When and How Proved.....	100
RETURNS TO BE MADE BY MARSHAL,		SURRENDER OF PREFERENCE, SEC.	
SEC. 5127 (b).....	128	5084.....	106
RULES, SUPREME COURT MAY PRE-		Preference.....	106
SCRIBE, SEC. 4999.....	66	TERRITORIES, POWERS OF DISTRICT	
Fees, Establishment of.....	67	COURTS FOR, SEC. 4978.....	63
General Orders.....	66	THIRD MEETING OF CREDITORS,	
Practice.....	67	SEC. 5093.....	109
Records.....	66	Register's Duty.....	109
SALE OF PROPERTY BY ASSIGNEE,		TIME OF COMMENCING SUITS BE-	
MODE OF, SEC. 5062 (b).....	96	TWEEN ASSIGNEE AND PERSONS	
Liabilities of Assignees.....	97	CLAIMING ADVERSE INTERESTS, 94	
OF DISPUTED PROPERTY, SEC. 5063.	98	SEC. 5057.	
Disputed Property.....	98	Jurisdictional Limitation.....	94
OF UNCOLLECTED CLAIMS, SEC. 5064	98	PERIOD OF FOUR MONTHS CHANGED	
SCHEDULE OF DEBTS, SEC. 5014....	73	TO TWO MONTHS, SEC. 5130 (a)..	133
SCHEDULE OF DEBTS, SEC. 5015....	74	TRANSFERS, PROHIBITED AND	
SCHEDULE OF DEBTS, SEC. 5030....	85	FRAUDULENT. ....	130
Preparation of Schedule.....	74	TRANSFERS TO DEFEAT THE ACT,	
AMENDMENT OF, SEC. 5020..	76	SEC. 5129.....	132
Amendments.....	76	Transfers to Strangers.....	133
Involuntary Bankruptcy.....	76	TRIAL, MODE OF, SEC. 566.....	59
Omission.....	76	Jury Trial.....	59
SECOND BANKRUPTCY, DISCHARGE		TRUSTEES, SETTLEMENT OF ESTATE	
UPON, SEC. 5116.....	121	BY, SEC. 5103.....	111

\* The headings in Roman lower case under title "Bankrupt Law" refer to headings under which the cases construing the Sections are separated.

**BANKRUPT LAW.\*—Continued.**

	PAGE		PAGE
Arrangement.....	113	LAW, ARRANGED ACCORD-	
TRUST PROPERTY, SEC. 5053.....	94	ING TO SUBJECT....	135
Trust Property and Trustees.....	94	CASES CITING AND CONSTRUING	
UNCOLLECTED CLAIMS, SALE OF,		THE VARIOUS SECTIONS OF	
SEC. 5064.....	98	THE BANKRUPT ACT AND	
VOLUNTARY BANKRUPTCY.....	73	GENERAL ORDERS, NUME-	
WAIVER OF SUIT BY PROVING DEBT,		RICALLY ARRANGED.....	87
SEC. 5105.....	115	Sections.....	87
Effect of Proof on Suits against		General Orders.....	55
Bankrupt.....	116	CASES REPORTED IN FIRST TEN	
WARRANT TO MARSHAL FOR GIVING		VOLUMES N. B. R. RE	
NOTICES, SEC. 5019.....	75	PORTS, ALPHABETICALLY	
Contents of Warrant.....	75	ARRANGED, AND REFER-	
Notice.....	75	RING TO SUBJECT.....	686
Publication.....	75	CASES REPORTED IN FIRST TEN	
Service of Papers.....	75	VOLUMES N. B. R. REPORTS,	
TO TAKE POSSESSION OF BANK-		NUMERICALLY ARRANGED	7
RUPT'S ESTATE, SEC. 5028.....	84	Vol. I.....	7
Default.....	85	Vol. II.....	9
Issue of Warrant.....	85	Vol. III.....	11
WITHDRAWAL OF PAPERS, SEC. 5082,	105	Vol. IV.....	13
Withdrawal of Papers.....	105	Vol. V.....	15
WITNESSES, BANKRUPT AND PAR-		Vol. VI.....	16
TIES MAY BE, SEC. 5086 (a).....	107	Vol. VII.....	17
WITNESSES MUST ATTEND, SEC.		Vol. VIII.....	18
5005.....	70	Vol. IX.....	19
MAY BE COMPELLED TO ATTEND,		Vol. X.....	20
SEC. 5087.....	107	CASHIER.....	274
Examination and Fees of Wit-		CERTIFICATE.....	274
nesses.....	107	CERTIFYING QUESTIONS.....	274
WRIT OF ERROR TO SUPREME		CHAMPERTY.....	276
COURT, SEC. 4989.....	66	CHATTEL MORTGAGE.....	276
Supreme Court.....	66	As an Act of Bankruptcy.....	276
BANK STOCK.....	269	Validity of.....	277
BILL IN EQUITY.....	269	CHEQUE.....	279
BANKRUPTCY OF PLAINTIFF... 269		CLAIM.....	279
BARGAIN AND SALE.....	269	CLAIM TO PROPERTY.....	280
BOARD OF TRUSTEES.....	269	CLAIM AND DELIVERY.....	280
BONA FIDE PURCHASER.....	270	CLAIM OF PRIORITY.....	281
BOND.....	270	CLERK.....	281
BONUS.....	270	COLLECTION OF DEBTS.....	282
BOOKS OF ACCOUNT.....	270	COMMENCEMENT OF PROCEED-	
BREACH OF PROMISE.....	272	INGS.....	282
BURDEN OF PROOF.....	272	COMMENCEMENT OF SUIT.....	283
On Assignee.....	273	COMMERCIAL PAPER.....	283
On Creditor.....	273	Act of Bankruptcy.....	283
On Defendant.....	272	Amendment of July, 1870.....	284
CARRYING ON BUSINESS.....	274	Defenses.....	285
CASES CITED.....	22	Definition of.....	284
CASES CITED, ADDITIONAL TO		Explanation of.....	287
THOSE UNDER THE SEC-		Payment of.....	287
TIONS OF THE BANKRUPT		Proof of.....	287
		COMMISSION MERCHANT.....	287

\* The headings in Roman lower case under title "Bankrupt Law" refer to headings under which the cases construing the Sections are separated.



	PAGE		PAGE
COMMISSIONER.....	287	COST AND FEES.— <i>Continued.</i>	
COMMITTEE OF CREDITORS.....	287	Creditors.....	315
COMMON CARRIER.....	288	Debt.....	316
COMPENSATION.....	288	Examination.....	317
COMPOSITION.....	288	Marshal.....	317
COMPROMISE.....	290	Mortgagee.....	318
CONCEALMENT.....	291	Printer's Fees.....	318
CONDITIONAL DELIVERY.....	292	Proof of Debt.....	318
CONFEDERATE MONEY.....	292	Register.....	318
CONFESSION OF JUDGMENT.....	293	Replevin.....	319
CONFUSION OF GOODS.....	294	Reporter.....	319
CONGRESS.....	294	Sheriff.....	319
CONSENT.....	295	Wife of Bankrupt.....	320
CONSIDERATION.....	295	COUNTER-CLAIM.....	320
CONSIGNMENT.....	296	COUNTERSIGNING CHEQUES.....	320
CONSPIRACY.....	296	COURTS.....	321
CONSTITUTIONALITY.....	296	Bankruptcy Court.....	321
CONSTRUCTION.....	297	Circuit Court.....	322
CONSULTATION.....	299	District Court.....	325
CONTEMPLATION OF BANK-		State Court.....	328
RUPTCY.....	299	Supreme Court.....	327
CONTEMPT.....	300	CREDITORS.....	334
CONTINGENT LIABILITY.....	302	CRIMINAL PROCEEDINGS.....	338
CONTRACT.....	305	CRITICISED CASES. See CASES.	
CONTRIBUTION.....	304	CUSTODY OF PROPERTY.....	338
CONVEYANCE.....	304		
CORPORATION.....	305		
What Corporations Amenable to		DAMAGES.....	339
Bankrupt Act.....	306	DEATH OF BANKRUPT.....	339
Acts of Bankruptcy.....	306	DEBT.....	339
Adjudication of.....	307	DEED ..	342
By-Laws.....	308	DEFAULT ..	343
Deed.....	308	DEFICIENCY.....	343
Insolvency.....	308	DEFINITIONS.....	343
Judgment.....	308	DELAY.....	344
Jurisdiction.....	309	DEMAND.....	344
Ordinary Course of Business.....	309	DEMURRER.....	344
Organization.....	309	DENIAL OF BANKRUPTCY.....	345
Quasi Corporations.....	309	DEPOSIT IN COURT.....	346
Railroads.....	309	DEPOSITIONS.....	346
Receiver.....	310	DIFFERENT DISTRICTS.....	347
Service upon.....	310	DISALLOWING CLAIMS.....	348
Sale.....	310	DISCHARGE. See OPPOSITION TO	
Stock.....	310	DISCHARGE.....	349
Stockholder.....	311	Act of Bankruptcy.....	349
Subscriptions to Stock.....	311	Adjournment.....	350
Suspension.....	312	Amendment.....	350
Ultra Vires ..	312	Application.....	350
COST AND FEES.....	312	Appearance.....	351
Attachment.....	312	Arrest.....	351
Assignee ..	312	Assent.....	351
Attorney and Counsel ..	312	Assets.....	352
Auctioneer.....	314	Assignee.....	352
Bankrupt.....	314	Bankrupt, Protection of.....	352

	PAGE		PAGE
<b>DISCHARGE.—Continued.</b>		<b>DISCHARGE.—Continued.</b>	
Books of Account.....	852	Waste.....	366
Buying to Sell Again.....	853	Wife.....	367
Certificate.....	853	Withdrawing Objections.....	366
Certifying Questions.....	853	Witness.....	367
Concealment.....	853	<b>DISCONTINUANCE OF PROCEED-</b>	
Contingent Liability.....	854	<b>INGS.....</b>	367
Continuing Contract.....	854	<b>DISCOVERY.....</b>	370
Conversion of Personal Property.	854	<b>DISCRETION.....</b>	370
Conveyances.....	854	<b>DISMISSAL OF PETITION.....</b>	371
Corporation.....	854	<b>DISPUTED TITLE.....</b>	371
Creditor.....	854	<b>DISQUALIFICATION OF JUDGE...</b>	371
Death... ..	854	<b>DISSOLUTION OF PARTNERSHIP.</b>	371
Deposit.....	854	<b>DISTRIBUTION.....</b>	371
Drawee.....	855	<b>DIVIDEND.....</b>	375
Estoppel.....	855	<b>DOWER.....</b>	376
Examination of Bankrupt.....	855	<b>DRAWEE.....</b>	376
Exemption.....	855		
False Swearing.....	855	<b>EARNINGS OF BANKRUPT.....</b>	376
Fiduciary Debt.....	855	<b>EMBEZZLEMENT.....</b>	376
Fifty per Cent.....	856	<b>ENCUMBERED PROPERTY.....</b>	377
Fraud.....	857	<b>ENDORSER.....</b>	377
Fraudulent Concealment.....	857	<b>ENJOINING PROCEEDINGS IN</b>	
Fraudulent Debt.....	858	<b>STATE COURT.....</b>	379
Fraudulent Payments Prior to		<b>EQUITY.....</b>	379
Act.....	858	<b>ESTOPPEL.....</b>	382
Fraudulent Preference.....	858	<b>EVIDENCE.....</b>	383
Habeas Corpus.....	858	<b>EXAMINATION.....</b>	387
Impeaching Discharge.....	858	Of Witnesses.....	387
Influencing Proceedings.....	859	Of Wife of Bankrupt.....	388
Jurisdiction.....	859	Of Bankrupt.....	389
Notice.....	860	After-Acquisitions.....	389
Oath.....	862	Application for.....	389
Opposition to Discharge.....	860	Arrangement, Proceedings in....	390
Partnership.....	862	Certifying Questions.....	390
Payment.....	863	Conduct of Examination.....	391
Petition.... ..	363	Contempt.....	392
Pleading.....	363	Cost and Fees.....	392
Practice.....	363	Counsel.....	392
Preference.....	364	Counterclaim.....	393
Property.....	364	Criminating Questions.....	393
Proof of Debt.....	364	Cross-examination.....	393
Proving Debt.....	364	Debts.....	393
Register.....	364	Discharge.....	394
Regularity.....	364	Final Examination.....	395
Release.....	365	Gaming.....	395
Residence.....	365	Order.....	395
Sale. ....	365	Wife's Separate Estate.....	395
Schedule.....	365	<b>EXECUTION.....</b>	396
Second Bankruptcy.....	365	Arrest.....	396
Specifications.....	365	Determination of.....	396
Surety.....	366	Election.....	397
Trustee.....	366	Lien.....	397
Wages.....	366		

	PAGE		PAGE
<b>EXECUTION.—Continued.</b>		<b>FORECLOSURE.....</b>	<b>411</b>
Property Included.....	397	<b>FOREIGN CREDITORS.....</b>	<b>412</b>
Property Subject to.....	397	<b>FOREIGN LAWS.....</b>	<b>413</b>
Restraining Enforcement.....	397	<b>FOUR AND SIX MONTHS.....</b>	<b>413</b>
Validity of.....	398	<b>FOURTEEN DAYS.....</b>	<b>415</b>
<b>EXECUTORS.....</b>	<b>399</b>	<b>FRAUD.....</b>	<b>415</b>
<b>EXEMPTION.....</b>	<b>399</b>	Arrest.....	416
Amendment.....	400	Assets.....	416
Additional Exemptions.....	400	Assignee.....	417
Application for.....	400	Assignment.....	417
Constitution of N. C.....	401	Composition.....	418
Domicile....	401	Constitutional.....	418
Exception.....	401	Conveyance.....	418
Exempt from Execution.....	401	Debts.....	419
Expectant Interest.....	401	Evidence.....	420
Furniture.....	401	Homestead.....	421
Grantee.....	401	Influencing Proceedings.....	421
Joint Assets.....	401	Insolvency.....	421
Lien.....	402	Intent.....	421
Mechanics.....	402	Judgment.....	422
Money.....	402	Jurisdiction.....	422
Necessary Articles.....	402	Jury Trial.....	422
Partnership.....	403	Limitation.....	423
Real Estate.....	403	Merger.....	423
Report of.....	403	Mortgage.....	423
State Law.....	403	Notice.....	424
Waiver.....	404	Ordinary Course of Business.....	424
Widow of Bankrupt.....	404	Payment.....	425
<b>EXPECTANT INTEREST.—See AS-</b>		Preference.....	425
<b>SETS.</b>		Proof of Debt.....	427
<b>EXPENSES.—See COST AND FEES.</b>		Reasonable Cause.....	427
<b>EXPUNGING PROOF.....</b>	<b>404</b>	Recovery of Property.....	427
		Representations.....	428
		Reservation.....	428
<b>FALSE REPRESENTATIONS.....</b>	<b>405</b>	Struggling to Keep up.....	428
<b>FAMILY EXPENSES.....</b>	<b>405</b>	Suspension of Payment.....	429
<b>FEES.—See COST AND FEES.</b>		Tax Sales.....	429
<b>FEME COVERT.—See ACT OF BANK-</b>		Time.....	429
<b>RUPTCY, MARRIED WOMEN.</b>		Trader.....	430
<b>FEME SOLE.....</b>	<b>406</b>	Transfer.....	430
<b>FIDUCIARY DEBT.....</b>	<b>406</b>	Vote.....	430
Arrest.....	406	Wife.....	430
Bankrupts.....	406		
Commission.....	406	<b>GAMING.....</b>	<b>431</b>
Guardian.....	407	<b>GENERAL ORDERS.....</b>	<b>431</b>
Payment.....	407	<b>GENERAL ORDERS IN BANK-</b>	
Specification.....	407	<b>RUPTCY.....</b>	<b>153</b>
<b>FIFTY PER CENT.....</b>	<b>407</b>	ACCOUNTS FOR SERVICES OF REGIS-	
<b>FILING PROOF OF DEBT.....</b>	<b>410</b>	TER AND MARSHAL, XII.....	157
<b>FINAL JUDGMENT.....</b>	<b>410</b>	AMENDMENTS, XIV.....	158
<b>FINISHING CHATTELS.....</b>	<b>410</b>	AMENDMENTS, XXXIII.....	167
<b>FIRST MEETING.—See MEETINGS</b>		APPEAL, XXVI.....	162
<b>OF CREDITORS.</b>		APPEARANCE, III.....	153
<b>FIXTURES.....</b>	<b>410</b>		

	PAGE		PAGE
<b>GENERAL ORDERS IN BANK- RUPTCY.—Continued.</b>		<b>GENERAL ORDERS IN BANK- RUPTCY.—Continued.</b>	
ARBITRATION, XX.....	161	PAYMENT OF MONEYS, XXVIII.....	163
ASSIGNEE, DISPOSAL OF PROPERTY BY, XXI.....	161	PERISHABLE PROPERTY, XXII.....	161
ASSIGNEES, DUTIES OF, XIX.....	160	PETITIONS AND AMENDMENTS, XIV .....	158
ASSIGNEE, TO, NOTIFICATION OF AP- POINTMENT, IX.....	156	PETITIONS, FILING IN DIFFERENT DISTRICTS, XVI.....	159
AUTHORITY, RECITAL OF.....	153	PREPAYMENT OR SECURITY FOR FEES, XXIX.....	163
CLERKS OF DISTRICT COURTS, DU- TIES OF, I.....	153	PRIORITY OF ACTIONS, XV.....	158
COMMENCEMENT OF PROCEEDINGS, IV.....	154	PROCEEDINGS IN CASE OF COPART- NERSHIP, XVIII.....	159
COMPOSITION UNDER SEC. 17 OF AMENDATORY ACT, XXXVI....	170	PROCESS, II.....	153
COMPOSITION WITH CREDITORS—AR- BITRATION, XX.....	161	PROOF OF DEBTS, XXXIV.....	167
COMPOUNDING CLAIMS, XVII.....	159	RECITAL OF AUTHORITY.....	153
COPARTNERSHIP, PROCEEDINGS IN CASES OF, XVIII.....	159	REDEMPTION OF PROPERTY AND COMPOUNDING CLAIMS, XVII..	159
COSTS, XXX.....	164	REFERENCE TO SECTIONS OF ACT, ETC., XXXVII.....	171
COSTS IN CONTESTED ADJUDICA- TIONS, XXXI.....	166	REGISTERS, V.....	154
DEPOSIT AND PAYMENT OF MON- EYS, XXVIII.....	163	SCHEDULES, XXXII.....	167
DIFFERENT DISTRICTS, FILING PE- TITIONS IN, XVI.....	159	SECOND AND THIRD MEETINGS OF CREDITORS, XXV.....	162
DISPATCH OF BUSINESS, VI.....	155	SECTIONS OF ACT, REFERENCE TO, XXXVII.....	171
DISPOSAL OF PROPERTY BY AS- SIGNEE, XXI.....	161	SECURITY FOR FEES.....	163
DUTIES OF ASSIGNEES, XIX.....	160	SERVICE OF NOTICE, XXIII.....	161
DUTIES OF CLERKS OF DISTRICT COURTS, I.....	153	SURRENDER OF PROPERTY—MAR- SHAL AS MESSENGER, XIII.....	157
EXAMINATION AND FILING OF PA- PERS, VII.....	155	TESTIMONY—HOW TAKEN, X.....	156
FEES AND COSTS, XXX.....	164	TRIAL BEFORE MARSHAL, XXXV..	169
FEES, PREPAYMENT OR SECURITY FOR, XXIX.....	163	GENERAL ORDERS, CASES CIT- ING AND CONSTRUING, NUMERICALLY ARRANGED.	55
FILING OF PAPERS, VII.....	155	GOLD COIN.....	431
FORMS AND SCHEDULES, XXXII...	167	GROWING CROPS.....	431
IMPRISONED DEBTOR, XXVII.....	162	GUARDIAN. ....	431
MARSHAL AS MESSENGER.....	157		
MARSHAL, TRIAL BEFORE, XXXV..	169	HABEAS CORPUS. ....	432
MINUTES BEFORE REGISTER, FIL- ING, ETC., XI.....	156	HOMESTEAD.....	432
MONEYS, DEPOSIT AND PAYMENT OF, XXVIII.....	163	HUSBAND AND WIFE.....	436
NOTICE, SERVICE OF, XXIII.....	161		
OMISSIONS AND AMENDMENTS, XXXIII.....	167	IGNORANTIA LEGIS.....	438
OPPOSITION TO DISCHARGE, XXIV..	161	ILLEGAL PROMISE.....	439
ORDERS BY THE REGISTER, VIII....	155	ILLEGIBILITY.....	439
PAPERS, EXAMINATION AND FILING OF, VII.....	155	IMPEACHING DISCHARGE.....	439
		IMPRISONED DEBTOR.....	439
		INDEMNITY.....	439
		INDICTMENT.....	440
		INFANT.....	440
		INFLUENCING PROCEEDINGS....	440

	PAGE		PAGE
INJUNCTIONS.....	441	JURISDICTION.— <i>Continued.</i>	
INSANITY.....	446	Non-Resident.....	468
INSOLVENCY.....	446	Paramount.....	468
INSOLVENT LAWS.....	448	Partners.....	468
INSURANCE.....	449	Penalty.....	469
INTENT.....	450	Plea.....	469
INTEREST.....	452	Proof of Claim.....	469
INTERPRETATION.....	453	Proportion of Creditors.....	469
INTERVENTION.....	453	Railroad.....	470
INVENTORY.....	454	Receiver.....	470
INVOLUNTARY BANKRUPTCY.		Residence.....	470
See BANKRUPTCY.		State.....	471
JOINT LIABILITY.....	454	State Courts.....	471
JUDGE.....	455	Summary.....	473
JUDGMENT.....	456	Supreme Court.....	473
Attachment.....	456	Title.....	473
After Adjudication.....	456	Verification.....	473
Creditor.....	456	JURY TRIAL.....	473
Conclusiveness.....	457	KNOWLEDGE OF INSOLVENCY...	474
Confession.....	457	LACHES.....	475
Corporation.....	457	LANDLORD.....	476
Equitable Assets.....	458	LEASE.....	476
Fraud.....	458	LEGAL PROCESS.....	477
Irregularity.....	458	LEVY.....	477
Lien.....	458	LIABILITY.....	477
Merger.....	459	LIEN.....	478
Note.....	460	Acquired within Four Months of	
Preference.....	460	Commencement of Proceedings.	479
Proof of.....	460	After Commencement of Proceed-	
Restraining.....	461	ings.....	479
Setting Aside.....	461	Advances.....	479
Title.....	461	By Attachment.....	479
Waiver.....	462	Bank.....	479
Writ of Error.....	462	Character of Lien.....	480
JUDICIAL NOTICE.....	462	Cost and Fees.....	480
JUDICIAL PROCEEDINGS.....	462	Enforcement of.....	480
JURISDICTION.....	462	Exceeding Value of Property....	481
Amount Due.....	463	Exempted Property.....	481
Bankrupt Court.....	463	Insurance.....	482
Carrying on Business.....	463	Judgment-Creditor.....	482
Circuit Court.....	464	Jurisdiction.....	484
Consent.....	464	Landlord.....	484
Corporation.....	464	Maritime Liens.....	485
Discharge.....	465	Mechanics and Material Men....	485
Discontinuance.....	465	Mortgage.....	486
District Court.....	465	Priority.....	486
Domicile.....	466	Sale of Property.....	486
Equitable.....	466	Taxes.....	487
Exclusive.....	467	Vendor's Lien.....	487
Foreclosure Mortgages.....	467	Waiver of.....	487
Judgment.....	467	When Lien Attaches.....	487
Levy.....	467		
Lien.....	467		

	PAGE		PAGE
LIFE INSURANCE. See INSURANCE.	449	NUNC PRO TUNC. See AMEND-	
LIMITATIONS.....	488	MENT.	
LOANS.....	490		
LUMBERMAN.....	491	OATH.....	514
		OMISSION FROM SCHEDULE. See	
MANDAMUS.....	491	SCHEDULE.	
MANUFACTURER.....	491	OPPOSING ADJUDICATION.....	514
MARRIED WOMAN.....	491	OPPOSING DISCHARGE.....	514
MARSHAL.....	492	ORDER.....	515
MARSHALING OF ASSETS.....	494	ORDINARY COURSE OF BUSINESS.	516
MECHANIC'S LIEN.....	494		
MEETINGS OF CREDITORS.....	494		
MERGER.....	496	PARTIES.....	517
MESSENGER. See COST AND FEES.		Attachment.....	518
MILEAGE.....	497	Adjudication.....	518
MINOR.....	497	Appeal.....	518
MISDEMEANOR.....	497	Conversion.....	518
MISJOINDER.....	498	Incumbrance.....	518
MONEY.....	498	Injunction.....	518
MORTGAGE.....	498	Partners.....	519
Acts of Bankruptcy.....	498	Petition.....	519
Advances.....	501	State Commissioners.....	519
Chattel Mortgage.....	502	PARTNERSHIP.....	519
Corporations.....	503	Adjudication.....	520
Deficiency.....	504	Assets.....	520
Exemptions.....	504	Death.....	521
Foreclosure.....	504	Discharge.....	521
Misdeameanors.....	509	Dissolution.....	521
Recording and Filing.....	505	Dividend.....	523
Rents and Profits.....	507	Exemptions.....	523
Sale of Premises.....	507	Fraud.....	523
Second Mortgage.....	507	Husband and Wife.....	524
Severance.....	508	Individual.....	525
Vessels.....	508	Joint Obligors.....	525
MORTGAGOR. See MORTGAGE; SUR-		Marshaling Assets.....	525
RENDER.		Partners.....	525
MUTUAL DEBTS.....	509	Priority.....	528
		Request.....	528
NAME.....	510	Schedule.....	529
NATIONAL BANK.....	510	Suspension of Payment.....	528
NECESSARIES. See EXEMPTION.		Surviving Copartner.....	528
NEGOTIABLE PAPER. See COM-		Transfer.....	529
MERCIAL PAPER.		Voting for Assignee.....	529
NEW PROMISE.....	510	Will.....	529
NEWSPAPERS.....	511	PAYMENT.....	529
NEW TRIAL.....	511	After Act of Bankruptcy.....	530
NON-RESIDENT CREDITOR. See		After Petition Filed.....	530
DEPOSITIONS.		Confederate Bonds.....	530
NON-SUIT.....	511	Four Months.....	530
NOTARY.....	511	Gold.....	530
NOTES. See COMMERCIAL PAPER.		Illegal.....	531
NOTICE.....	511	Indorser.....	530
		Petitioning Creditor.....	531



# GENERAL INDEX.

755

	PAGE		PAGE
<b>PAYMENT.—Continued.</b>		<b>POUNDAGE.</b> See <b>SHERIFF.</b>	
Struggling to Keep Up.....	531	<b>POWER OF ATTORNEY.....</b>	545
<b>PENALTIES.....</b>	531	<b>PRACTICE.....</b>	547
<b>PENDING SUIT.....</b>	531	<b>PRECEDENTS.....</b>	554
<b>PERISHABLE PROPERTY.....</b>	532	<b>PRE-EXISTING INDEBTEDNESS..</b>	554
<b>PETITION.....</b>	532	<b>PREFERENCE.....</b>	554
Amount Due.....	532	Attachment.....	555
Amendment.....	532	Bank Deposits.....	555
Corporation.....	534	Dealings with Bankrupt by others	
Cost.....	534	than Creditors.....	555
Foreclosure.....	535	Elements of Preference.....	555
Illegible.....	535	Execution.....	555
Injunction.....	535	Insurance.....	555
Intervention.....	535	Intent.....	555
Parties.....	535	Judgment.....	556
Pleading.....	535	Payment.....	556
Proportion of Creditors.....	535	Returning of Goods.....	556
Second Petition.....	535	Securing Debt.....	558
Secured Debt.....	536	Generally.....	558
Signing.....	536	Mortgages.....	559
Verification.....	536	Warrant to Confess Judgment.	560
<b>PLEADING.....</b>	536	Transfers.....	562
Abatement.....	537	<b>PREFERRED CREDITOR.....</b>	564
Admissions.....	537	<b>PRESENT CONSIDERATION.....</b>	564
Allegation as to Proportion of		<b>PRESUMPTION OF LAW.....</b>	564
Creditors.....	537	<b>PRINCIPAL AND AGENT.....</b>	564
Amendment.....	537	<b>PRINCIPAL AND SURETY.....</b>	564
Claim and Delivery.....	538	<b>PRINTER'S FEES.</b> See <b>COST AND</b>	
Defenses.....	538	<b>FEES.</b>	
Denial of Fraudulent Intent.....	538	<b>PRIORITY.....</b>	565
Demurrer.....	538	<b>PRIVILEGE OF COUNSEL.....</b>	567
Pleading Discharge.....	539	<b>PROCEEDINGS IN BANKRUPTCY.</b>	567
Equity Pleadings.....	540	<b>PROCEEDINGS IN REM.....</b>	569
Fraud.....	540	<b>PROCEEDING IN STATE COURT..</b>	569
General Denial and Demand for		<b>PROCESS.....</b>	570
Jury.....	541	<b>PROCURING OR SUFFERING</b>	
Indictment.....	542	<b>PROPERTY TO BE TAKEN..</b>	570
Injunction.....	542	<b>PRODUCTION OF BOOKS AND PA-</b>	
New Matter.....	542	<b>PERS.....</b>	572
New Promise .....	542	<b>PROMISSORY NOTES.</b> See <b>COMMER-</b>	
Objections.....	542	<b>CIAL PAPER.</b>	
Payment.....	540	<b>PROOF OF DEBT.....</b>	572
Petition.....	540	Agent.....	572
Replication.....	541	Amendment.....	572
Specifications.....	543	Before whom Made.....	573
Stoppage of Payment.....	543	Commercial Paper.....	574
Trover.....	544	Consideration.....	574
Variance.....	544	Contesting Proof.....	574
Verification.....	544	Disposition of Proof.....	574
<b>PLEDGE.....</b>	544	Effect of Proof.....	575
<b>POLICY OF INSURANCE.....</b>	544	Form of Proof.....	575
<b>POSTPONING PROOF.</b> See <b>As-</b>		Judgment Creditor.....	575
<b>SIGNEE, PROOF OF DEBT.</b>		Jurisdiction over.....	575
<b>POSSESSION.....</b>	545	Lien.....	576

	PAGE		PAGE
<b>PROOF OF DEBT.—Continued.</b>		<b>REGISTER.—Continued.</b>	
Medium of Payment.....	576	Assignee.....	596
Policy of Insurance.....	577	Assignment.....	597
Postponement.....	576	Attorney.....	597
Register.....	577	Auditing.....	597
Securities.....	577	Bankrupt.....	597
Transfer of Claim.....	577	Books and Papers.....	598
Withdrawing Proof.....	578	Certificate of Conformity.....	598
<b>PROPERTY OF BANKRUPT.....</b>	<b>578</b>	Certifying Questions.....	598
<b>PROPERTY UNWARRANTABLY</b>		Countersigning Cheque.....	599
<b>TAKEN.....</b>	<b>579</b>	Discharge.....	599
<b>PROPORTION OF CREDITORS. See</b>		Discretion.....	599
<b>AMENDMENT, PETITION.</b>		Examination.....	599
<b>PROTECTION OF BANKRUPT. See</b>		Fees.....	600
<b>BANKRUPT.</b>		Meetings.....	601
<b>PROTEST.....</b>	<b>580</b>	Newspaper.....	601
<b>PROVABLE DEBT.....</b>	<b>580</b>	Oath.....	601
Attorney's Services..	580	Opinion.....	601
Commercial Paper.....	580	Order.....	601
Confederate Treasury Notes.....	581	Powers.....	602
Confusion of Goods.....	582	Proof of Debt.....	602
Contingent Liability.....	582	Protection of Bankrupt.....	602
Cost and Charges.....	582	Removal.....	603
Debt Created by Fraud.....	582	Supervision...	603
Insurance.....	583	Surrender of Bankrupt.....	603
Interest.....	583	Voting.....	603
Intoxicating Liquors.....	583	<b>REGULARITY OF PROCEEDINGS.</b>	<b>603</b>
Judgment.....	583	<b>REHEARING.....</b>	<b>603</b>
Minor.....	584	<b>RELATIVE OF BANKRUPT.....</b>	<b>603</b>
Partnership Debts.....	584	<b>REMEDY.....</b>	<b>603</b>
Purchased Claims.....	584	<b>RENT.....</b>	<b>604</b>
Secured Debts.....	584	<b>REPORTED CASES. See CASES.</b>	
Statute of Limitation.....	585	<b>REPRESENTATIONS.....</b>	<b>607</b>
Torts.....	585	<b>RESIDENCE.....</b>	<b>607</b>
Undue Claim.....	585	<b>RESTRAINING PROCEEDINGS.</b>	
Wages.....	585	See <b>STAY OF PROCEEDINGS.</b>	
What is Provable Debt.....	585	<b>REVIEW.....</b>	<b>609</b>
When it must Exist.....	586	<b>RULES.....</b>	<b>611</b>
Wife of Bankrupt.....	586		
<b>PUBLICATION.....</b>	<b>586</b>	<b>SALE.....</b>	<b>611</b>
<b>PURCHASE OF CLAIMS.....</b>	<b>586</b>	<b>SAVINGS BANK.....</b>	<b>617</b>
<b>PURCHASER.....</b>	<b>587</b>	<b>SCHEDULE.....</b>	<b>617</b>
		<b>SECESSION. See WAR.</b>	
<b>RAILROAD CORPORATIONS.....</b>	<b>588</b>	<b>SECOND AND THIRD MEETINGS.</b>	
<b>RATIFICATION.....</b>	<b>589</b>	See <b>MEETINGS.</b>	
<b>REASONABLE CAUSE.....</b>	<b>590</b>	<b>SECURED CREDITORS...</b>	<b>619</b>
<b>RECEIVER.....</b>	<b>592</b>	Advances.....	620
<b>RECONSTRUCTION. See WAR.</b>		Assessment of Value.....	620
<b>RECORD.....</b>	<b>594</b>	Banker.....	620
<b>RECOVERY OF PROPERTY.....</b>	<b>595</b>	Change of Security.....	620
<b>REFERENCE.....</b>	<b>595</b>	Continuing Debt.....	620
<b>REGISTER.....</b>	<b>596</b>	Contract for Security.....	620
Amendment.....	596	Deficiency.....	620

	PAGE		PAGE
<b>SECURED CREDITORS.—Continued.</b>		<b>STOCK BOARD.....</b>	<b>642</b>
Endorser.....	621	<b>STOCKHOLDER.....</b>	<b>642</b>
Entirety of Contract.....	621	<b>STRANGER.....</b>	<b>644</b>
Form.....	621	<b>STRUGGLING TO KEEP UP.....</b>	<b>644</b>
Insolvency.....	622	<b>SUBPCENA.....</b>	<b>644</b>
Insurance.....	622	<b>SUBROGATION.....</b>	<b>645</b>
Interest.....	622	<b>SUBSTITUTION.....</b>	<b>645</b>
Joint.....	622	<b>SUFFERING PROPERTY TO BE</b>	
Judgment.....	622	<b>TAKEN.....</b>	<b>645</b>
Liquidation of Lien.....	622	<b>SUITS.....</b>	<b>646</b>
Petitioning in Bankruptcy.....	623	<b>SUMMARY PROCEEDINGS.....</b>	<b>647</b>
Preference.....	623	<b>SUPPLEMENTARY PROCEEDINGS</b>	<b>648</b>
Proof in Bankruptcy.....	623	<b>SURETY.....</b>	<b>649</b>
Restraining.....	624	<b>SURPLUS.....</b>	<b>649</b>
Reasonable Cause.....	624	<b>SURRENDER.....</b>	<b>650</b>
Sale.....	625	<b>SUSPENSION OF PAYMENT.....</b>	<b>652</b>
Separate Debt.....	625		
Separate Securities.....	626	<b>TABLE OF CASES. See CASES.</b>	
Transfer.....	626	<b>TABLE OF CORRESPONDING</b>	
Trustee.....	626	<b>NUMBERS IN OCTAVO EDI-</b>	
Voidable Title.....	626	<b>TION OF N. B. R. REPORTS.</b>	<b>682</b>
Vote.....	626	<b>TAXES.....</b>	<b>655</b>
Waiver.....	627	<b>TESTIMONY.....</b>	<b>656</b>
<b>SEPARATE CLAIM.....</b>	<b>627</b>	<b>THIRTY-FIFTH SECTION. See</b>	
<b>SERVANTS. See WAGES.</b>		<b>PREFERENCE.</b>	
<b>SERVICE OF PAPERS.....</b>	<b>627</b>	<b>THIRTY-NINTH SECTION. See</b>	
<b>SET-OFF.....</b>	<b>628</b>	<b>ACT OF BANKRUPTCY.</b>	
<b>SETTING ASIDE CONVEYANCES.</b>	<b>630</b>	<b>THIRTY PER CENT. See AMEND-</b>	
<b>SETTLEMENT ON WIFE.....</b>	<b>631</b>	<b>MENT, DISCHARGE.</b>	
<b>SHERIFF.....</b>	<b>632</b>	<b>TIME.....</b>	<b>656</b>
<b>SIX MONTHS.....</b>	<b>633</b>	<b>TITLE.....</b>	<b>658</b>
<b>SLAVES.....</b>	<b>633</b>	<b>TORTS.....</b>	<b>660</b>
<b>SPECIFICATIONS.....</b>	<b>633</b>	<b>TRADER.....</b>	<b>661</b>
<b>SPIRITUOUS LIQUORS.....</b>	<b>635</b>	<b>TRANSFER.....</b>	<b>661</b>
<b>STAMP DUTY.....</b>	<b>636</b>	<b>TRESPASS.....</b>	<b>663</b>
<b>STATE INSOLVENT LAWS.....</b>	<b>636</b>	<b>TROVER.....</b>	<b>663</b>
<b>STATUTE OF FRAUDS.....</b>	<b>637</b>	<b>TRUST.....</b>	<b>663</b>
<b>STATUTE OF LIMITATIONS.....</b>	<b>637</b>	<b>TRUSTEE.....</b>	<b>665</b>
<b>STAY OF PROCEEDINGS.....</b>	<b>637</b>	<b>TWO YEARS... ..</b>	<b>666</b>
Appeal.....	637		
Assignee.....	637	<b>ULTRA VIRES. See CORPORATION.</b>	
Bankrupt's Property.....	637	<b>UNIFORMITY OF BANKRUPT ACT</b>	<b>666</b>
Corporation.....	638	<b>UNITED STATES COMMISSIONER.</b>	<b>667</b>
Discharge.....	638	<b>UNLIQUIDATED DAMAGES.....</b>	<b>667</b>
Dividend.....	638	<b>UNREASONABLE DELAY. See</b>	
Execution.....	638	<b>DISCHARGE, STAY OF PROCEED-</b>	
Fraudulent Debt.....	639	<b>INGS.</b>	
Judgment.....	639	<b>USUFRUCT. See ASSETS.</b>	
Jurisdiction.....	639	<b>USURY.....</b>	<b>667</b>
Lien Creditor.....	639		
Leave to Sue.....	640	<b>VACATING PROOF.....</b>	<b>669</b>
Suits in State Court.....	640		
Supplementary Proceedings.....	641		
<b>STOCK.....</b>	<b>641</b>		

	PAGE		PAGE
VALIDITY OF PROCEEDING. See		WAGERING CONTRACT.....	672
PROCEEDINGS IN BANKRUPTCY.		WAGES.....	672
VARIANCE.....	669	WAIVER.....	673
VERIFICATION.....	669	WANT OF NOTICE.....	674
VIOLATION OF AGREEMENT. See		WAR.....	675
AGREEMENT.		WARRANT.....	675
VOID AGREEMENT. See ILLEGAL		WARRANT OF ATTORNEY. See	
CONTRACT.		POWER OF ATTORNEY.	
VOLUNTARY APPEARANCE. See		WATCHMAN.....	676
APPEARANCE.		WIDOW.....	676
VOLUNTARY BANKRUPTCY. See		WIFE OF BANKRUPT.....	676
BANKRUPTCY.		WITHDRAWAL OF PAPERS.....	679
VOLUNTARY CONVEYANCE.....	670	WITNESS.....	679
VOTE.....	670	WRIT OF ERROR.....	681















CX ENB YAr D  
National bankruptcy register d  
Stanford Law Library



3 6105 044 191 513